

United States
Circuit Court of Appeals
For the Ninth Circuit.

5

Apostles on Appeals.
(IN TWO VOLUMES.)

CHARLES P. DOE, Claimant of the Steamship
"GEORGE W. ELDER," Her Engines, etc.,
Appellant,
vs.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion, and UNITED STATES FIDELITY
and GUARANTY COMPANY, Stipulators,
Appellees.

VOLUME II.
(Pages 321 to 647, Inclusive.)

Upon Appeal from the United States District Court for the
District of Oregon.

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(Testimony of W. H. Patterson.)

Q. Is that a maneuver that you are required to make frequently in this river, here?

A. Required to make very frequently in this river, here; almost every trip, as you go up and down the river, you have that occurrence to do—the same thing to do.

Mr. CAMPBELL.—I want to inquire whether there are any of the witnesses of the "Elder" in court. I don't know them myself.

A. There is none here, sir; none that belongs to the "Elder" at all.

Q. Suppose you were a thousand feet from her?

A. I could turn halfway around.

Q. In a thousand feet?

A. A thousand feet, yes.

Q. You say that when about twelve or fifteen hundred feet away from the "Kern" she gave you these signals. Was that following any signal of yours?

A. Yes, I blowed one whistle; got no answer.

Q. I am speaking when you were a thousand feet away, or twelve hundred feet away, was the signal you got from the "Kern" in response to any signal from you?

A. That is when I blew my second whistle.

Q. What was it? A. One whistle.

Q. What does it mean?

A. Means for me to pass starboard.

Q. To his starboard? [298]

A. Yes, that is my whistle.

Q. You were asking for permission to pass to his starboard? A. His starboard, yes.

(Testimony of W. H. Patterson.)

Q. That is when you got the cross-whistle?

A. Cross-whistle; yes.

Cross-examination.

Questions by Mr. CAMPBELL.

Now, when you rounded Cooper's Point and saw these lights ahead, you knew it was the "Kern," didn't you?

A. I knew it was a vessel going downstream, yes, sir.

Q. You knew it was the "Kern," didn't you?

A. Wasn't sure at that time whether it was the "Kern" or not.

Q. Why were you not sure?

A. Might have been some other vessel going down.

Q. Hadn't you passed the "Hercules"?

A. I had passed the "Hercules," yes.

Q. You knew what business the "Hercules" was in? A. Yes, sir.

Q. You saw the light barges, didn't you?

A. Saw them going up the river.

Q. Going up the river?

A. Saw the light barges with the "Hercules" in tow.

Q. Had she passed Cooper's Point? A. Yes, sir.

Q. Had the light barges in tow, going up the river?

A. Yes, sir.

Q. How far above Cooper's Point did you meet her?

A. This side Cooper's Point, probably a quarter of a mile.

Q. A quarter of a mile above? A. Yes, sir.

Q. Nearly to Eureka Cannery? [299]

(Testimony of W. H. Patterson.)

A. That is farther above.

Q. How far above?

A. Eureka Cannery a mile above Cooper's Point.

Q. At that time the "Hercules" was fast to the barges? A. Yes, sir; it was.

Q. When you passed the "Hercules" in tow of the light barges, if you did as you said, then you knew that the "Kern" was below, didn't you?

A. Knew the "Kern" was on the way down the river somewhere. Didn't know what position she was in at that time. Had no way of finding out.

Q. When you rounded Cooper's Point, you didn't know it was the "Kern"?

A. I wasn't sure whether it was the "Kern" or not. Might have been some other vessel. I could not tell until I found out. My mind is not as good as all that.

Q. You were submitted to quite a severe examination by the United States Inspectors, weren't you, on this collision? A. I was, yes, sir.

Q. They found you at fault for the collision, didn't they?

Mr. DENMAN.—I object to that question, if you intend to try that other case here. Here is the question: Presuming this man was found in fault before another tribunal, now, if that is to be evidence in this case we have to go into the other case; show the difference in the evidence given there and the evidence given here, and show that the facts on which they based their decision are entirely different from the facts upon which we ask the Court to pass. I submit the question should not be allowed to be put to the witness. [300]

(Testimony of W. H. Patterson.)

COURT.—What is the purpose of the question?

Mr. CAMPBELL.—I think it goes to the veracity of this witness.

Mr. FULTON.—If they claim he made any different statement there—

Mr. CAMPBELL.—This witness testified to a certain condition of facts.

COURT.—You may ask the question and we will see what becomes of it. I will overrule the objection and you may proceed.

Q. The question was whether or not you were not found at fault for this collision.

A. I was, in a way, yes, but if I had had a fair show and had had models of the barges and everything to show the Inspectors I would not have been in fault at all, and if I win this case I am coming back at the Inspectors and ask for a new trial.

COURT.—I think the findings of the Court is the best evidence upon that.

Mr. DENMAN.—We move to strike out the evidence in so far as it shows there has been an adverse decision.

Mr. WOOD.—It seems to me that is a *quasi* judicial finding.

COURT.—The mere fact that a decision of that kind is made by the Inspectors would not control this Court on a finding under the evidence which is adduced here. I understand from counsel that they simply produce that as a matter of showing the credibility, or as bearing upon the credibility of the witness.

(Testimony of W. H. Patterson.)

Mr. DENMAN.—Produce the judgment or the testimony.

COURT.—The judgment itself, the finding that he was in error? [301]

Mr. DENMAN.—As affecting his credibility.

COURT.—I understand that was what he offered it for.

Mr. DENMAN.—Then we object on the ground that it is irrelevant. There is no logical connection between that finding and the credibility of this witness. As far as that finding is concerned he may have gone in and confessed his fault.

COURT.—The rule is that a man may be asked on the witness-stand—and that goes to his credibility—as to whether or not he has been convicted of a crime, and my mind is running on that line, as to whether or not this would be a matter proper to be received in evidence, simply as going to his credibility. Is that all you offer it for, Mr. Campbell?

Mr. CAMPBELL.—That was my object in asking.

COURT.—I think on that ground I will let it in, for that purpose, and for that purpose alone.

Mr. CAMPBELL.—For instance, this entire matter was laid before the Inspectors, and there is absolute contradiction in the testimony between the parties.

Mr. DENMAN.—Now, Mr. Campbell, there is no evidence of that in this case.

Mr. CAMPBELL.—I am not offering this in evidence. I am explaining to the Court.

(Testimony of W. H. Patterson.)

Mr. DENMAN.—You can't argue to the Court on another case entirely.

COURT.—I will say that the finding will not affect this Court, because we are not trying that matter. The only ground upon which I will admit the evidence at all is as affecting the credibility of the witness. That is as far as it could go, as I say, under any circumstances. [302]

Mr. DENMAN.—Your Honor, I object on the further ground that no foundation has been laid showing that there was any controversy as to the credibility in the other case at all. There is not shown in this record any conflict of testimony between this party and anybody else. Furthermore, in the controversy a crime is not involved. There is no criminal element in it.

COURT.—The Court when it comes to a final consideration of the matter will give it such consideration as it is entitled to as the Court may be advised hereafter.

Mr. CAMPBELL.—The Court will understand I was not attempting to go into, in this case, the testimony in the other case, but I was trying to tell your Honor my reason, or my views as to why this question was admissible to affect the credibility of this witness. This man testified he was given a cross-signal or two whistles; the other man testified he was given a danger signal.

Mr. DENMAN.—That is entirely unfair.

Mr. CAMPBELL.—Isn't that true?

Mr. DENMAN.—My opponent is not entitled, by

(Testimony of W. H. Patterson.)

question or otherwise, to bring in through me or through anybody but the witness on the stand, what occurred in another case.

COURT.—I will not go into the other case. I think that is as far as I will permit the examination so far as the other record is concerned, as affecting the credibility of the witness.

Q. Now, you recall what you testified to before the Inspectors, don't you? A. I do, yes, sir.

Q. And you remember at that time—you have read it over since that time, haven't you? [303]

A. No, sir; I never have.

Q. Never have? A. No, sir; no, I haven't.

Q. Your memory on incidents leading up to the collision was probably fresher in your mind at the time you were here before the Inspectors than it is now, three years afterwards?

A. Well, I don't know as they would be. I remember all about it now. I remember now just about as well as I did then.

Q. Could you then as well as now?

A. Could I then as well as now?

Q. Could you remember as well then as you do now? A. I think so; as least I tried to.

Q. Then this testimony is correct, is it, Captain?

A. Sir?

Q. I want to read a little of this to you: "Q. Now, when you first saw the 'Kern' it was as you rounded Cooper's Point? A. Yes, sir. Q. And what did you see of her then? A. Seen the 'Kern.'

(Testimony of W. H. Patterson.)

I could see her lights and the barge lights and everything going. Q. All the lights, did you say? A. I seen her searchlight and all over. Her other lights around the barges making fast, whatever they were doing. Q. You saw the lights on the barges? A. Oh, yes, I could see the carrier lights on the outside of the barge, of one of the barges—carrier light on each side. Q. You knew it was the 'Kern'? A. I knew it was the 'Kern,' yes, sir."

Mr. DENMAN.—Read it all.

Mr. CAMPBELL.—You may read it when you come to redirect examination.

Mr. DENMAN.—You left out the next question.

[304]

Mr. CAMPBELL.—Q. Now, you want to testify that you thought when you rounded Cooper's Point the "Kern" was on her way down the river?

A. Certainly I said the "Kern" was on her way down the river.

Q. And in this testimony you say that at the time you rounded Cooper's Point you could see the barges were being made fast?

Mr. DENMAN.—Or whatever it was.

A. Or whatever it was, yes.

Q. Whatever they were doing, you saw them doing something at that particular place?

A. I knew something going on. I supposed were moving, making fast, going on down the river.

Q. When this question was asked, "You knew it was the 'Kern'?" you correctly answered, "I knew it was the 'Kern,' yes, sir"?

(Testimony of W. H. Patterson.)

A. I might have said that.

Q. It was true, wasn't it?

A. I don't know whether it was or not.

Q. You were trying to tell the truth?

A. Why, certainly, as near as I know how.

Whereupon Court adjourned to 2 o'clock P. M.,
Wednesday, February 7, 1912. [305]

Portland, Oregon, Wednesday, February 7, 1912,
2 P. M.

W. H. PATTERSON resumes the stand.

Mr. DENMAN.—There was a question on direct examination I did not put to the witness, on which I am sure Mr. Campbell will want to cross-examine. I will put it to him now, with counsel's permission. (To witness.) Captain, I ask you whether you ordered this full speed astern maneuver?

A. Yes, sir.

Mr. DENMAN.—Was it executed?

A. Yes, sir.

Mr. DENMAN.—Was it followed up by any further order? A. Yes, sir.

Mr. DENMAN.—What was that?

A. I kept ringing continuously until we got almost down to the wreck,

Mr. DENMAN.—What was the purpose of it?

A. I wanted to notify my engineer there was something wrong; I wanted to back the ship as hard as we could.

(Testimony of W. H. Patterson.)

Mr. DENMAN.—That is the usual thing?

A. Yes, sir, on all ocean-going steamers.

Cross-examination Resumed.

Q. What was the necessity of that, Captain?

A. So as to let the engineer know we wanted just as much power out of the engines as we possibly could get to stop the ship.

Q. When you give an order from the bridge for full speed astern doesn't the engineer obey it?

A. Yes, sir. [306]

Q. When you order the engine full speed astern doesn't he put the engine full speed astern?

A. Yes, sir, he puts the engine full speed astern, but he doesn't throw the engines wide open to give her all there is in the engine. No ship does that.

Q. How do you know that?

A. That is the customary rule of sea-going ships.

Q. Do you know it on this particular vessel?

A. I know it on all vessels.

Q. When you give the direction full speed astern don't you go full speed astern?

A. Yes, sir, go full speed astern.

Q. When you say full speed astern don't you mean full efficiency which will run the vessel backwards?

A. Yes, but always an engineer can give a little more all the time. Can tell the fireman to raise to higher steam.

Q. Then between the time you gave the first signal and the second signal full speed astern he told the fireman to put on more steam?

(Testimony of W. H. Patterson.)

A. No, he don't run around to the fireman to tell him anything, the engineer don't.

Q. What did you say it for?

A. He has a man he sends there.

Q. Before we get further, let's understand. Let me finish my question and I will give you a chance to finish your answer. What did you mean, then, when you said it was necessary so that the fireman could get more steam on?

Mr. DENMAN.—He didn't say it was necessary, he said it was the practice to do it.

A. It isn't a practice, of course, not to do that.

[307]

Q. What did you mean when you said it was necessary so that the fireman could get more steam on her? A. In backing?

Q. Yes, after you gave the second signal full speed astern.

A. Oh, a speaking tube. All the engineer has to do is to tell the oiler to telephone the fireman to keep up as much steam as possible. That is an easy thing.

Q. Why was it necessary to give these repeated orders full speed astern, on several occasions?

A. So as to notify the engineer down below something was wrong. We wanted to get the ship stopped as quickly as possible.

Q. Why was that?

A. He wouldn't know. I might be going into the beach with the ship.

Q. Why was that necessary?

(Testimony of W. H. Patterson.)

A. Why was that necessary?

Q. Yes.

A. Why, to let the engineer know there was something wrong, I say.

Q. Why was it necessary for you to have her go full speed astern?

A. Because I seen these barges and this boat ahead here; seen an obstruction of some kind; I didn't know whether it was barges or what it was then.

Q. Didn't I read the testimony to you this morning, wherein you said you saw the barges after you first passed Cooper's Point?

A. After I first rounded Cooper's Point?

COURT.—Wait until counsel gets through with his question before you answer.

Q. You testified before the Inspectors that you saw the "Kern" [308] and knew it was the "Kern" when you first rounded Cooper's Point, didn't you?

A. I don't think I said that at all.

Q. Didn't I read that to you this morning?

A. You might have read it, but I—I have got to come around the point first before I see her. I couldn't see her on the other side of the point.

COURT.—Don't argue; just answer the question.

A. All right.

Q. You couldn't see her on the other side of the point? A. No, sir.

Q. You couldn't see her on the other side of the point. How far off Eureka cannery did you pass?

A. Well, about—not over two hundred feet.

(Testimony of W. H. Patterson.)

Q. Not over two hundred feet?

A. Not with a deep drafter.

Q. Did you ever go down there to the location of the wreck afterwards?

A. Seen the wreck a good many times.

Q. Did you ever go down and take bearings on her? A. Did going up with ships, yes.

Q. Did you ever go down and take cross-bearings on her? A. No, I never did.

Q. You wouldn't say from your own knowledge that Captain Crowe was wrong when he said he stood upon the mast of the wreck and looked past Cooper's Point and picked up the tenth window of the cannery, from outside the cannery, would you?

A. I wouldn't think he could do it, no.

Q. You wouldn't say that was not correct, would you? A. Yes, I would. [309]

A. *Yes, I would*, I wouldn't believe him.

Q. Have you any knowledge which advises you so that you can say that?

A. Because I know going—how is that?

Q. You have never taken a bearing so you can say Captain Crowe was absolutely wrong?

A. Not from that standpoint.

Q. Now, then, look at this chart, Captain. If you came down two hundred feet off Eureka cannery and the "Kern" was in the position that she is indicated upon this chart, couldn't you see her from Eureka cannery past Cooper's Point?

A. No, sir.

Q. You couldn't? A. No, sir.

(Testimony of W. H. Patterson.)

Q. I want you to come down here just a moment and make a drawing for me. I want you to take and draw upon this drawing a line from the outer edge of the packing companies dock through Cooper's Point. Is that the line?

A. From Eureka cannery, yes. (Drawing.)

Q. I want it through the point. You have it just outside the point, now. A. Oh, through the point.

Q. Just at the edge of the point.

A. How are you going to get over these rocks here?

Mr. DENMAN.—Just draw it as he wants it.

Q. I meant the edge of the point; just so it cuts the edge of the point.

A. The edge of Cooper's dock, do you mean?

Q. Yes. Across the point now. Now, will you mark the line you have drawn "A B"?

A. What for?

A. *What for?* [310]

Mr. DENMAN.—Just mark it.

Q. I am asking you to do this, Captain,

A. What do I want to mark it for? You mark it, you can draw as well as I can.

Q. Is the line "A B" the one you have drawn?

A. That is the one I have drawn, yes.

Q. Now, Captain, if you were navigating outside that line to Cooper's Point—and you were, weren't you? A. A little bit; yes.

Q. And the "Kern" was sunk upon that line—upon the projection of that line from Cooper's Point,

(Testimony of W. H. Patterson.)

you could see her as you passed Cooper's cannery,
couldn't you?

A. Yes, but how do I know she was sunk on that
line?

Q. I am not asking that. I ask if you passed
Eureka cannery two hundred feet off and the
"Kern" was sunk upon the line "A B" somewhere
below Cooper's Point, then you could see the
"Kern" when you passed Eureka cannery, couldn't
you? A. No, sir, I couldn't do it.

Q. Why not?

A. Well, you can't see it, that is all there is to it.
You couldn't see it to save your life. You nor
Crowe, nor nobody else.

Q. Why not?

A. How are you going to do it? You got all these
trees hanging here and these trees on this point.
You can't see across there.

Q. Let me give you the question again. If you
pass Eureka Point two hundred feet off it, then you
would pass to the south of the line "A B," wouldn't
you? [311]

A. A little bit, yes.

Q. Now, then, if you passed to the south of the line
"AB" and the "Kern" was sunk upon the projection
of the line "A B," somewhere below Cooper's Point,
you could, when you were two hundred feet off
of Eureka cannery, see the "Kern" where she was
sunk? A. You couldn't; no, sir.

Q. Can you explain to me on this chart why you
can't do it? A. You can't do it.

(Testimony of W. H. Patterson.)

Q. Can you explain?

A. Because the "Kern" was sunk in here. She wasn't sunk on this line at all. She was sunk inside here.

Q. I am asking if she was sunk on that line.

A. I don't think so, no, you couldn't do it, because you have the obstruction of these trees along there, You couldn't see there.

Q. Then this point which I mark with the letter "C" projects beyond Cooper's Point?

A. On the same line; you could see the same line. You could see a line right there, but these trees on this point there are thick; heavy growth.

Q. But if you were out in the stream, two hundred feet beyond the end of the cannery dock, then the trees on Cooper's Point, the trees on the point marked "C," wouldn't obstruct anything in or on the projection line "A B" below Cooper's Point?

A. You couldn't see the "Kern" down there at all; it is impossible to see it.

Q. You don't answer the question; you understand what I am asking you, don't you?

A. Even if she was on that line you couldn't see the "Kern" [312] down there—on that line as you say the "Kern" was there, you couldn't see her at all.

Q. Why not?

A. Because I say the trees out in the way wouldn't allow.

Q. If the line "A B" passes the edge of Cooper's Point, and the edge of the point "C," still you say you couldn't see the "Kern"? A. No, sir.

(Testimony of W. H. Patterson.)

Q. And you still say you couldn't see 200 feet off the Eureka Dock?

A. No, sir; you couldn't see the "Kern" on that line there.

Mr. CAMPBELL.—Chart is in evidence and the lines are drawn on Libelant's Exhibit 5.

Mr. DENMAN.—In order that I may understand, what is the materiality of the question whether or not he could see the "Kern" above Cooper's Point or at Cooper's Point?

Mr. DENMAN.—I am not on the stand; if you have any objection on the ground of materiality, you can argue them.

Mr. DENMAN.—I am entitled to a reason. The point I make is this: It seems utterly immaterial so long as they saw the "Kern" at Cooper's Point, three-quarters of a mile away, what happened up the stream before that. I can't see how it affects the case in any way.

Mr. CAMPBELL.—This witness just testified he couldn't see the "Kern" above Cooper's Point.

COURT.—It goes to the credibility of the witness.

Q. Now, Captain, the reason you backed full speed astern and repeated the order several times was for the purpose of getting as much backing power on your vessel as was possible out of her engines and boilers? A. That was true, yes, sir. [313]

Q. So that at that time you knew a collision was imminent, didn't you?

A. I could see an obstruction ahead, certainly.

Q. I say, you knew a collision was imminent?

(Testimony of W. H. Patterson.)

A. Certainly.

Q. You knew you were in danger of colliding with that vessel?

A. That is an obstruction, isn't it?

COURT.—Answer the question.

A. Yes, having got those danger signals; when I started to put my ship full speed astern, I knew there was danger ahead of some kind, certainly.

Q. So, when you got those signals from the "Kern" you interpreted them as danger signals—danger ahead.

A. Whatever the signals might have been.

Q. You interpreted them as danger signals, I say?

A. It doesn't make a particle of difference whether I had two or four, because I had blown my one whistle and I had to stop my ship and put my ship, the law says, full speed astern.

Q. Didn't you say when you received these signals from the "Kern" you knew there was a collision imminent?

A. I didn't say danger signals. You are trying to interpret it to me that they were danger signals. If they were danger signals or cross-whistles, I had to do the same thing under the same circumstances.

Q. You interpreted them as danger signals, didn't you?

A. No, you are trying to interpret that way.

Q. You so testified this morning.

Mr. FULTON.—No, he didn't.

Q. Captain, when you put your engine full speed astern upon receiving the signal from the "Kern,"

(Testimony of W. H. Patterson.)

why didn't you blow the danger signal? [314]

A. Why didn't I?

Q. Yes.

A. Because I didn't have an opportunity to do it. I was trying to find what was ahead of me. There must be some obstruction ahead of me.

Q. Why didn't you blow the danger signal?

A. Why should I? I didn't have a chance. I was trying to find out what was ahead of me.

Q. You didn't know what was ahead of you?

A. No, had no reason to suppose it was a danger signal at all. He had blowed a whistle before—a cross-whistle to me, or danger signal, whichever you might put it.

Q. Before this? A. Before that, yes.

Mr. DENMAN.—Before what?

A. Before I put my engine full speed astern.

Q. Oh, you had danger signals from him before that? A. Before what?

Q. Before you put your engine full speed astern?

A. Now, you are not going to get me wound up on this. I am going to have a fair question—know what I am talking about.

Q. Didn't I understand you to say that before you put your engine full speed astern you had the danger signals from him?

A. Before I put my engine full speed astern?

Q. Yes.

A. He blowed me some whistles, yes.

Q. Those were danger signals, were they?

(Testimony of W. H. Patterson.)

A. If you might term it that way, they were cross-whistles.

Q. They were danger signals? [315]

A. It meant I couldn't go on the starboard side—had no chance to go on the starboard side. There was some obstruction there. It wouldn't be safe—these whistles.

Q. You interpreted them as danger signals?

A. They meant I must stop the ship and put the ship full speed astern.

Q. Did you interpret them as danger signals?

A. There was no difference whether danger signals or cross-whistles. I had to put my ship full speed astern.

Mr. DENMAN.—What did you interpret them to be?

COURT.—What did you suppose them to be?

A. That I must stop my ship.

COURT.—Were they danger signals?

A. Would be in a way, yes, Judge, because they was cross-whistles.

Q. If a cross-whistle was given you and you received it, weren't you required to blow a danger signal yourself? A. A danger signal myself?

Q. Yes.

A. He kept blowing them. He blowed two and then two again, one right after another.

Q. One right after another? A. Yes.

Q. Did you answer any danger signal?

A. No. sir.

Q. Why not?

(Testimony of W. H. Patterson.)

A. I didn't have an opportunity. I was trying to find out what was the matter. I says to the second mate, "For God's sake, what were those fellows trying to do?"

Q. You didn't have an opportunity to blow?

A. I was busy trying to find out what this obstruction was ahead of me.

Q. How long did it take you to find out? [316]

A. I didn't have any time to fool any time away, I will tell you that.

Q. What is that?

A. Didn't have much time to fool away.

Q. When you say you didn't have much time to fool away, you mean you didn't have very much time between the time you received the danger signal and the collision. Is that what you mean?

A. That is what I mean, yes, certainly.

Q. Now, Captain, when you came around—shifted your course at Cooper's Point, I understand you to say that you blew—that you ordered your helm aport?

A. When I came around Cooper's Point?

Q. Yes.

A. Yes, I ported my wheel and put him half a point on my starboard bow.

Mr. DENMAN.—Put him?

A. Put the "Kern."

Q. Did you port your helm above Cooper's Point or below?

A. Right at Cooper's Point, when I started to go around.

(Testimony of W. H. Patterson.)

Q. When you squared up?

A. I couldn't square up until I got around.

Q. Was it after you squared up that you put your helm aport?

A. No, sir; going straight then—had her half a point on the port bow when I blew my whistle.

Q. What I mean is, when you reached Cooper's Point you came down through Eureka Channel on a range, did you not? A. No, sir.

Q. Where did you come, how?

A. Straight down the shore line.

Q. Don't you run down from a range up above Eureka Cannery— [317] on a sign or a board that is nailed up on Eureka Cannery itself?

A. No, there is no sign. There is a stake light on the cannery.

Q. Isn't there a stick there for the daytime?

A. No, I never seen any there. I know where the stake light is. The light hangs on the southwest corner of it.

Q. At night? A. There is a light there.

Q. There is a pole upon the southwest corner of the cannery building which carries what kind of a light?

A. White light.

Q. That is a range light? A. No, sir.

Q. What is it? A. A single stake light.

Q. When you come down Eureka Channel past the cannery you go on that white light, don't you?

A. Yes, certainly.

Q. I mean you are carrying that white light over your bow? A. Yes.

(Testimony of W. H. Patterson.)

Q. When you get abreast Eureka Cannery you pick up the range on Cooper's Point, don't you?

A. Inside Cooper's Point, the red light and the white light—not on Cooper's Point. The point projects a long ways outside this range.

Q. And you come down on that until you get abreast Cooper's Point, don't you?

A. On that range light?

Q. Yes. A. No, sir.

Q. How do you come down?

A. Keep that on the starboard side—that is, after coming down—

Q. When you come down on that range light from the cannery to Cooper's Point, don't you come down on it until you get abreast [318] Cooper's Point?

A. That is Cooper's Point—this is the light inside here and the red light is on this rock here.

Q. You are pointing to "W" as Cooper's Point?

A. No, there is the range light, red on the rock and white here. That takes us up past Bill Hume's on that range.

Q. We are not talking about going up the river.

A. Going up or down, no difference.

Q. After you pass Eureka Cannery, or when you get abreast of it, isn't your next line that you follow determined by the red and white light just inside Cooper's Point? A. No, sir.

Q. What do they have it there for?

A. As I told you, that red light and the white light is on that dredge channel above Eureka—between Bill Hume's and Eureka.

(Testimony of W. H. Patterson.)

Q. You just said it was on Cooper's Point.

A. No, sir; I said it was inside Cooper's Point.

Q. What is the light at Cooper's Point?

A. A light for going both ways; when you go past the Eureka Cannery you put Eureka Point on the starboard bow.

Q. Until you pass Cooper's Point?

A. Until you pass Cooper's Point.

Q. And you pick up the Waterford Light?

A. After you go by you pick up the Waterford Light.

Q. When you come down from Eureka Cannery carrying the light from Cooper's Point on your starboard bow, you hold that course until the Waterford Light comes into view? A. As you get past?

Q. I say, you hold that course from Eureka Cannery, you hold that course until you bring the Waterford Light into view, don't you? [319]

A. Sometimes we do, and sometimes we don't. As a rule, we do.

Q. Did you ever turn before you bring the Waterford Light into view?

A. No, we can't, we would go on the rocks there.

Q. When you do bring the Waterford Light into view, you change your course to get past the Waterford? A. Yes.

Q. So you make a change in your course at Cooper's Point, don't you? A. At Cooper's Point.

Q. Now, then, did you port your helm for the purpose of making the change at Cooper's Point, or did you port your helm after you made the change?

(Testimony of W. H. Patterson.)

A. After I got past the light and coming around down for Waterford Light, I ported my wheel to put the "Daniel Kern" on my port bow.

Q. Did you make that change at Cooper's Point for the purpose of rounding Cooper's Point or for the purpose of putting the "Kern" on your port bow?

A. I put my ship down through the ship's channel past the "Daniel Kern" or whatever boat was at that point. I didn't know whether it was the "Daniel Kern."

Q. You understand the question. Did you port your helm for the purpose of rounding Cooper's Point, or to put this steamer on your port bow?

A. Port bow—to put whatever object it was on my port bow.

Q. Then you ported your helm after you was by Cooper's Point?

A. After I was by Cooper's Point, certainly, just by the point. Just after you get by the light.

Q. After you turned at the point you ported your helm? A. Certainly.

Q. Then, as I understand it, you ported your helm enough so [320] it would take you down about 400 feet off the Washington shore?

A. About that vicinity, yes.

Q. Is that right? A. That is about right.

Q. So that at that time you were planning to pass the "Kern" about 600 feet inside of her, weren't you?

A. I had plenty of room to pass down between the shore and the "Kern."

(Testimony of W. H. Patterson.)

Q. I say, you were planning to pass the "Kern" about 600 feet inside?

A. I didn't plan—I didn't know what distance she was off until afterwards—after the investigation.

Q. What room were you going to give the "Kern"?

A. There was plenty of room. I had plenty of room inside. You don't have to give a vessel 600 feet to pass her.

Q. Couldn't you tell from Cooper's Point that the "Kern" was about a thousand feet offshore?

A. No, sir; I couldn't.

Q. When you ported your helm half a point you knew it was going to take you up 400 feet off the Washington shore, didn't you? A. Yes.

Q. And how far did you figure that was going to take you off the "Kern"?

A. I supposed probably a couple of hundred or three hundred feet, somewhere.

Q. Then the "Kern" was not in as far as you thought she was?

A. Not—no—why, she was in the fairway, yes. She was right in the range channel like, but I had plenty of room to pass, if he had let me pass, with safety.

Q. I didn't ask you that. I know you are anxious to state that.

Mr. DENMAN.—I object to that "I know you are anxious to state that." [321]

Q. Captain, when you planned to pass within 400 feet of the Washington shore and when you figured you were going to pass to the right-hand side of the

(Testimony of W. H. Patterson.)

“Kern” about two or three hundred feet, and it did afterwards turn out the “Kern” was further off shore than you figured— A. It might have been.

Q. Didn’t it afterwards turn out that way?

A. It turned out that way, yes.

Q. If you had turned Cooper’s Point, as you say that you did, and ported your helm so as to take you 400 feet off the Washington shore, then you would have passed the “Kern” about 600 feet to her starboard, wouldn’t you?

A. According to the way the wreck laid afterward, yes, but they wouldn’t let me do it.

Q. Now, then, when you reversed full speed astern, you say that you threw your bow to port?

A. Threw the bow to port, yes.

Q. How much would it throw your bow to port in 500 feet?

A. Well, that is a thing that I can’t judge for.

Q. You have been pilot of these steamers for twenty years, haven’t you? A. Yes.

Q. Didn’t you testify this morning to the effect that while going full speed ahead under a hard over helm you could throw her halfway around in a thousand feet?

A. Yes, but going full speed ahead; on backing with the wheel one way or the other you can’t do that. That is no way—no seafaring man or no sailor can do it.

Q. After 20 years’ piloting of this steamer you mean to say you can’t testify how far the “Elder’s”

(Testimony of W. H. Patterson.)

bow would go to port when you are backing her full speed ahead? [322]

A. No, sir; me nor no other man—I mean the exact distance she would swing. Of course, we know she will swing and she will swing fast, but how fast we couldn't exactly tell.

Q. You couldn't tell. How far would she swing in a thousand feet, Captain?

A. Well, in a thousand feet she would swing a good long ways.

Q. Now, if you put your helm to starboard when you backed full speed astern, would it swing as much?

A. I don't think it would make very much difference.

Q. Why did you put your helm to starboard?

A. So it would throw my head off quick, before we threw the engines off for backing.

Q. Did you order this helm starboard before you put full speed astern? A. At the same time.

Q. And the helm would be hard astarboard as quick as full speed astern?

A. The wheel would go hard astarboard quicker than the engines.

Q. So she wouldn't feel any effect in the engines before she would feel the effect of the helm hard astarboard?

A. At the same time, she would be swinging all the time.

Mr. DENMAN.—One moment. One of our witnesses on a theoretical question is in the courtroom.

(Testimony of W. H. Patterson.)

Do you desire to have him excused?

Mr. WOOD.—Yes, I think so.

Mr. DENMAN.—He is excused.

Q. As a matter of fact, you put your helm hard to starboard when you ordered your engines full speed astern, didn't you? A. I did, sir.

Q. You did that for a purpose, didn't you? [323]

A. As I just said, I wanted to throw the ship off as much as I possibly could as quick as I possibly could.

Q. For the very purpose of keeping her bow from going as rapidly to port as it would if you didn't have her helm hard astarboard?

Mr. DENMAN.—I don't think that question is intelligible. You put her helm to starboard to throw her head to port, not to keep her from.

A. To keep the ship's head swinging to port. If I put the helm to starboard the bow will go to port, won't it?

Q. If you put your helm hard astarboard, which way does that throw your rudder?

A. Throws the bow this way.

Q. Which way the rudder?

A. Throws the rudder this way.

Q. To port, doesn't it? A. Yes.

Q. Suppose your vessel is proceeding down the river, going ahead, and you throw your helm hard astarboard, which way will it throw your bow?

A. To port.

Q. Suppose you are backing and throw your helm

(Testimony of W. H. Patterson.)

hard to starboard, which way will it tend to throw your bow?

Mr. DENMAN.—You mean going backward, or backing your engine? You may be backing your engines while going ahead or may be backing the ship. You don't indicate by the question which you meant.

Q. I am talking about backing the engine under those conditions. If, when your vessel is going ahead, you suddenly reverse your engine full speed astern and throw your helm hard to starboard, does that tend to throw your bow more to port or to steady?

A. Does at the start.

Q. Does what? [324] A. Throws the bow off.

Q. Why?

A. Because the ship has a strong headway on her.

Q. So, then—

A. The ship is going through the water.

Q. As I understand, you were going a course you figured would take you from two to three hundred feet off the "Kern"? A. Yes.

Q. And at that time you figured also it would take you about 400 feet off the Washington shore?

A. I couldn't figure the distance at all. I figured she was going to clear. That was all I was figuring.

Q. Didn't you testify this morning 400 feet was the distance?

A. Well, I said it was, yes, when we came along down shore there.

Q. You were giving your best judgment then, weren't you? A. Certainly.

Q. Now, then, if when you reversed your steamer

(Testimony of W. H. Patterson.)

full speed astern you put the helm hard to starboard, it tended to throw her more toward the shore; if, when you backed full speed astern you threw your helm hard to starboard, as you have testified, it tended to throw the bow of your steamer all the quicker to port towards the "Kern," didn't it?

A. It did, yes. I was trying to stop my ship; that is what I was trying to do.

Q. You answer my question, please. I say it tended to throw your bow off quicker toward the "Kern," didn't it?

A. It had a tendency to throw my ship to port.

Q. Was that toward the "Kern"?

A. Toward the "Kern," yes, toward that way.

Q. Was it toward the "Kern"? [325]

A. Well, it naturally turned out that way, yes.

Q. Well, you saw at the time it was going to throw you toward the "Kern," didn't you?

A. What else could I do?

Q. I say, you saw at that time it tended to throw it toward the "Kern," didn't you?

A. Yes, threw me away from the "Kern," yes.

Q. Why did it throw you away from the "Kern"?

A. By backing my ship full speed astern and a left-hand wheel, it would naturally throw me away from her as much as possible.

Q. Then you were already carrying the "Kern" on your port bow?

A. I was carrying her on the port bow. My idea then was to throw my ship clear of the "Kern" if I possibly could. That was my idea.

(Testimony of W. H. Patterson.)

Q. But again I ask, didn't it have the effect of throwing the bow of your steamer quicker toward the "Kern"?

A. Certainly, toward the "Kern," yes.

Q. What did you mean this morning when you testified you knew she would swing to port when you saw the "Kern" 200 feet in a thousand feet?

A. What?

Q. What did you mean this morning when you testified, when you put her full speed astern 1,000 feet from the "Kern," or 1,500 feet, you thought it would throw you 200 feet toward the "Kern"?

A. I didn't say that.

Q. What did you say?

A. I didn't say that. I don't remember saying anything about that.

Mr. DENMAN.—Talking about going ahead, not reversing.

Q. Now, Captain, did you testify this morning that in running full speed ahead, if you suddenly starboard your helm, that it would throw your bow 200 feet to port in a thousand feet? [326]

A. Going ahead?

Q. Yes.

A. Oh, I thought you meant—I understand your question now.

Mr. DENMAN.—Just repeat the question so he will get it clear.

Q. (Read.)

A. Well, I misunderstood. I beg your pardon. I misunderstood your question there.

(Testimony of W. H. Patterson.)

Q. I didn't ask this question before. I ask this now. That is what you testified this morning, isn't it, that if you were running ahead and you suddenly starboarded your helm it would throw your bow up 200 feet to port in the thousand feet you travel?

A. I don't think I testified that, as I know.

Q. What did you say in respect to that?

A. I don't know now.

Q. If you did testify to that, Captain,—

A. If I was going along ten knots, you say, twelve knots?

Q. Full speed.

A. Full speed and I go a thousand feet away.

Q. Yes, and you suddenly starboard your helm.

A. I put my helm hard to starboard, I would clear an object much more than 200 feet, more than 400 feet, if I would keep my engines going, but my engines mustn't be stopped; they must go ahead so I get action on the wheel—on the rudder.

Q. Well, let's be clear about this. If you are running ahead full speed and you suddenly put your helm hard to starboard, you would clear by over 400 feet an object that was a thousand feet ahead of you. Is that correct?

A. I could, yes. I could clear three or four hundred feet. [327]

COURT.—Which side?

A. If I put the helm hard astarboard, that would put the object on the starboard side.

COURT.—That would throw your ship on the Oregon shore?

(Testimony of W. H. Patterson.)

A. On the Oregon shore—throw her off this way.

Q. Now, then, Captain, if you had put your helm hard to starboard at the time you came down behind the “Daniel Kern,” at the time when you were a hundred feet away and continued your engine full speed, you would have cleared her about 400 feet?

A. I have no right to do it.

Q. You would have cleared?

A. I would have cleared, yes, probably a little more.

Q. That would mean if you were running full speed ahead and you suddenly starboarded your helm, it would throw your bow about 400 feet to port while your ship was traveling a distance of 1,000 feet ahead, wouldn’t it? That is what that means, doesn’t it?

A. It would throw the bow of the “Elder” so.

Q. Let me repeat again. If you are running full speed ahead and you suddenly put your helm hard to starboard, it would throw your bow 400 feet to port while your vessel was going ahead 1,000 feet, wouldn’t it?

A. Well, I said three or four hundred feet.

Q. Three or four hundred feet, yes. Now, then, Captain, if while you were running full speed ahead you backed your engine and put your helm hard to starboard, would your bow swing as much as it would if you were going ahead at full speed?

A. No, she wouldn’t.

Q. How much do you think it would swing?

(Testimony of W. H. Patterson.)

Mr. DENMAN.—Do you mean the same time or the same distance?

Mr. CAMPBELL.—Same distance, a thousand feet. [328]

Mr. DENMAN.—You didn't put it in the question the same distance. The point is this, she would be going slower in backing.

Mr. CAMPBELL.—I will put it so we will have it clear in the record.

Q. If your vessel was going—was backed full speed astern after she had been running full speed ahead—if, while your steamer was running full speed ahead you suddenly back her full speed astern and throw your helm at the same instant hard to starboard, I ask whether or not her head—her bow would go as far to port as it would if you had continued running on full speed and put your helm hard to starboard— A. Might and might not.

Q. —in your judgment.

A. Well, I don't know.

Q. Will she swing as much under a hard over helm, hard to starboard helm when backing full speed astern as she will when going ahead full speed astern? A. No.

Q. So she wouldn't swing 300 feet if backing full speed astern?

Mr. DENMAN.—Same time or same distance?

Q. I mean distance. She wouldn't swing the same distance if backing as if going ahead.

A. I said I don't know—I don't think she would.

Q. How much less do you think she would swing?

(Testimony of W. H. Patterson.)

A. I couldn't tell.

Q. When you backed your steamer full speed ahead at this time and threw her helm hard to starboard you didn't know how far the bow would swing?

A. I knew it would swing, but I didn't know how far. No man could tell that. [329]

Q. You have been 20 years piloting that vessel?

A. Yes, 25 years.

Q. But you don't think, according to your best judgment, it would swing 300 feet?

A. Well, I don't know whether it would or not.

Q. Do you think it would swing more than 300 feet? A. Well, she might and she might not.

Q. Now, Captain, when you rounded Cooper's Point and ported your helm half a point so it would take you 400 feet off the Washington shore, if the "Kern" was a thousand feet off the Washington shore, it should have shut out your starboard light from the "Kern," shouldn't it?

A. It might have been shut out for all I know.

Q. I say, it should have shut it out?

A. Well, it looks that way, yes.

Mr. DENMAN.—That is what your witness testified.

Mr. CAMPBELL.—My witness didn't testify the light was shut off.

Mr. DENMAN.—I beg your pardon.

Q. Is that right, Captain? If the "Kern" was a thousand feet offshore and when you rounded Cooper's Point you ported your helm so as to carry you 400 feet off the Washington shore, wouldn't

(Testimony of W. H. Patterson.)

your turning your ship that much toward the Washington shore necessarily shut out your starboard light from the "Kern"?

A. It would depend on the screen board. It might and it might not.

Q. Are the lights on the "Elder" so fixed that you can see the green light across the bow of that ship?

A. No, no.

Q. Are they? A. No, I don't think so; no.

[330]

Q. Now, if they are fixed so that the green light does not shine across the bow, they are complying with the law, are they not? A. Yes—

Q. But if they did shine across they did not comply—

A. —but remember when I rounded Cooper's Point this vessel was a quarter of a mile away. It makes quite a difference.

Q. I say, if the screens on the green light were not fixed so that they could be seen across the bow of that steamer, then they were proper screens, were they?

A. I say they might and they might not.

Q. I say they were not proper screens, if you could see the light across the bow from the starboard side?

A. I didn't say they could.

Q. I say, they were not proper screens if you could see the green lights across the bow?

A. No, no, you are right about that.

Q. Now, then, if, after rounding Cooper's Point you ported your helm so as to bring you 400 feet off the Washington shore and the "Kern" at that time

(Testimony of W. H. Patterson.)

was 900 feet off the Washington shore, you ought to have shut out your green light from the "Kern," ought you not?

A. Well, I ought to, but I don't know whether we did or not. I wasn't on the "Kern," but was on the "Elder."

Q. You should have, if the screens were proper?

A. Yes.

Q. And, as far as you know, the screens were proper? A. As far as I know, yes.

Mr. DENMAN.—Mr Campbell, I will produce that at the time of the argument or at the close of our case. I remember very distinctly your witness testifying we shut out our green light. (Referring to colloquy on page 273.) [331]

Mr. CAMPBELL.—One of my witnesses yesterday?

Mr. FULTON.—Yes.

Mr. CAMPBELL.—When he rounded Cooper's Point?

Mr. DENMAN.—Just after that.

Mr. CAMPBELL.—I would just like to see that.

Mr. DENMAN.—Well, we will find it.

COURT.—Did you port your helm before you gave the signal to the other ship to pass?

A. Yes, sir; I ported my helm and brought her down to half a point with the "Daniel Kern" on the port bow when I first rounded the point—when I got right around the point.

COURT.—How soon after you ported your helm did you give the signal, the passing signal?

(Testimony of W. H. Patterson.)

A. The passing signal going down, why, just as soon as I rounded the point I ported my wheel. I seen an object and ported my wheel and brought around and blowed one whistle. Right after I put the wheel to port I told the officer on the bridge to blow one whistle, which he did immedately.

COURT.—Had the ship changed its course when you blew one whistle?

A. Yes, sir; going around the point and got her on my port bow when I done it.

Q. Didn't you testify before the Inspectors that you ported your helm after you blew your first whistle? A. I don't think so.

Mr. DENMAN.—In order to get it clear in Your Honor's mind, the whistles that were exchanged at the time they began to back were some time after this first whistle was blown off the point.

Mr. CAMPBELL.—That is what they testify.

COURT.—I understand that, but the witness Captain Moran [332] testified that they saw all the lights on the first signal that was given.

Q. Now, if you say you blew your first whistle immedately after rounding Cooper's Point, did you receive his response to it?

A. No response whatever.

Q. Why didn't you blow the danger whistle?

A. I blew another whistle.

Q. How soon afterwards?

A. Why, a few minutes, almost immedately after; when I found he didn't answer, I blew one more whistle.

(Testimony of W. H. Patterson.)

Q. How soon after you blew the first whistle did you follow with the second whistle?

A. Well, I can't say just exactly, a second or a minute or nothing of that kind.

Q. Didn't you have time to blow the danger signal after you blew your first whistle?

A. Why should I blow a danger signal?

Q. I say, didn't you have time to blow a danger signal between the time you blew your first whistle and your second whistle?

A. It wasn't necessary, sir.

Q. Is that the question?

COURT.—Answer the question. Did you have time between your first and second whistle to blow a danger signal?

A. Yes, I might if I had wanted to, yes.

Q. Doesn't the law require you, when you give a vessel a passing signal and that whistle is not answered, doesn't it require you to blow a danger signal?

A. I don't think so. I have a right to blow another whistle which is a common occurrence on the Columbia River. [333]

Q. So you don't think the law requires you to blow a danger signal after you give one passing signal and that is not answered?

A. Well, it has never been done.

Q. I am asking your idea about the law now.

Mr. DENMAN.—I submit the law will speak for itself.

(Testimony of W. H. Patterson.)

COURT.—You can answer as to your understanding of the rule.

MR. DENMAN.—Do you contend there is a rule to that effect?

A. I seen I had plenty of room on the inside and I told the officer on the bridge to blow another whistle, for I seen I had plenty of fairway to go about my business clear.

Q. You say you blew your second one-blast whistle almost immediately after you blew your first one blast? A. Yes.

Q. Was that within a minute or a few seconds?

A. I didn't have my watch in my hand.

Q. Well, your judgment about it?

A. Well, I couldn't say; I won't say, because I don't know, but shortly afterwards.

Q. Well, after you blew your second whistle, why didn't you give the danger signal when you didn't receive any response?

A. Because they began to blow from the "Daniel Kern"—began to blow those two whistles.

Q. How many whistles did you get from the "Daniel Kern"?

A. I got two whistles, so far as I know—first two whistles, then two whistles again.

Q. Then how many?

A. God knows how many more; they kept on blowing.

Q. You didn't blame them, did you?

A. I don't know; if I had been in the same predicament I might have done it. [334]

(Testimony of W. H. Patterson.)

Q. Let me understand you. After you blew the second one whistle you got an immediate response from the "Kern" of two whistles?

A. After I blowed the second whistle?

Q. Yes.

A. Yes, I got two whistles, and then two whistles after that—almost immediately after he blew the first two.

Q. Then you had this: You had a one-whistle blast from our vessel, followed by a second; immediately after you got two whistles from the "Kern" and immediately after those two whistles, two whistles more?

A. That was my understanding. It was two whistles, as near as I could understand it.

Q. I say, that is the whistles you got?

A. That is what I understood, yes.

Q. Did you get those whistles?

A. I told you—

COURT.—He says that was his understanding. I think that is an answer.

Mr. CAMPBELL.—I thought it was the interpretation he was giving as to whether a danger signal or a passing signal.

Q. Now, Captain, how do you reconcile your statement this morning that you struck the "Daniel Kern" at right angles with the photograph which shows that you struck her angling into her stern? How do you reconcile it with that photograph?

Mr. DENMAN.—I object to that on the ground that it has been testified regarding this photograph

(Testimony of W. H. Patterson.)

that the stern had been pulled around afterward and cut off afterwards by the maneuver after she was struck. The testimony regarding this photograph was they cut in and afterwards screwed the stern off, so this photograph can't indicate the position at the moment of striking. [335]

COURT.—That shows the stern of the boat afterwards.

Mr. CAMPBELL.—It shows the cut. I am not asking about swinging.

Mr. DENMAN.—The testimony was the vessel cut in and then tore that off and they had to hold it together by chains when they brought it up.

Mr. CAMPBELL.—The testimony didn't say the stern was torn off. The stern was shifted around so it was lashed together with chains. If you will inspect the photograph you will see how the stern twisted. The photograph shows the cut.

Mr. DENMAN.—It shows how she was mashed, but whether it shows at the moment of the collision or afterwards—

COURT.—Captain Crowe illustrated with this model. Go ahead.

Q. How do you reconcile that statement, Captain, that cut shows the starboard quarter of this vessel?

A. That is where we hit her. Naturally, it bulged this thing all up.

Q. You still want to say you struck her at right angles?

A. I didn't say at right angles, entirely. I said we struck her a glancing blow when her bow was swing-

(Testimony of W. H. Patterson.)

ing to the—when our bow was swinging around like this. We hit her right in here on the starboard quarter. I said not as far ahead as Captain Crowe got this marked, but he said yesterday this was not exactly right.

Q. So the line of the blow of your steamer into the "Daniel Kern" was not, as you testified this morning, at right angles, but was an angling blow?

A. Was an angling blow, yes. I said straighter in than what this was.

COURT.—Further back?

A. Further back, right in here. [336]

COURT.—That is what I understood the testimony was.

Q. So it was not at right angles. Did you examine the "Kern" after it was raised?

A. I seen her in the drydock.

Q. After repairs were being made upon her?

A. After they started to pull her to pieces.

Q. Now, Captain, what does that law provide that you shall do when you reverse your engine full speed astern? A. In what case?

Q. In case when you are running ahead and you suddenly reverse your engine full speed astern, what does the law provide that you shall do?

A. Nothing, that I know of.

Q. Don't you know what the law requires you to do as the pilot of a vessel, when you are running down the river full speed ahead and you suddenly reverse your engine, with a vessel ahead?

A. If the vessel is astern, blow three whistles.

(Testimony of W. H. Patterson.)

Q. If ahead? A. Blow three whistles.

Q. Why not in this case?

A. I didn't have an opportunity to do it.

Q. Why not?

A. Was trying to find what this object was ahead of me.

Q. Would that make any difference what the object was ahead of you, as to whether you blew three whistles or not? A. Depends on circumstances.

Q. You knew there was a steamer ahead of you?

A. Certainly, yes.

Q. Don't the law require you to blow three whistles when you went full speed astern?

A. Probably, yes, but that wouldn't help the case any. [337]

Q. Doesn't it require it? A. I believe so.

Q. Why didn't you?

A. I said I didn't have time to do it. I was trying to find out what this obstruction was ahead of me.

Q. What difference what character of object was ahead so long as you knew it was a steamboat?

Mr. DENMAN.—He didn't say he knew it was a steamer.

A. I said I was trying to find out what the object was.

Q. Didn't you know it was a steamer?

A. Might have been something else there besides a steamer.

Mr. WOOD.—Excuse me; when his testimony was read over he said he knew it was the "Kern."

Mr. DENMAN.—The point is this: He saw the

(Testimony of W. H. Patterson.)

“Kern,” but the “Kern” signaled something was in the way to his starboard to prevent his going through. He was looking to see what that is.

A. It might have been one of those barges, floating around without lights. I couldn’t tell.

Q. What did the signals of the “Kern” mean as a matter of interpretation of the law? No word of mouth passed between you and the “Kern” to the effect that there was an obstruction at your starboard, did there? All you had was this series of four whistles—two whistles and two whistles? A. Yes.

Q. I again ask you why you didn’t blow these three whistles indicating your engines were working full speed astern when you reversed your propeller?

A. As I told you, I was trying to find out what the obstruction was ahead. My blowing three whistles wouldn’t help me a particle.

Q. What difference did it make the character of the obstruction ahead, with your blowing three whistles? [338]

A. I don’t know if it would have made any. I had plenty of room to pass inside. Why did he blow the danger signal—you say he blowed the danger signal? Why did he blow the danger signal? I had plenty of room to pass down there with safety—it is just the same thing.

Q. Captain, why did you shift your helm hard to starboard when you reversed your engine?

A. I just said so as to throw her off as much as I possibly could from his vessel ahead.

(Testimony of W. H. Patterson.)

Q. Did you expect to pass her to port—pass her on her port side?

A. I expected to pass her on my starboard side.

Q. And on her port side?

A. And on her port side.

Q. What difference did it make to you what obstruction there was then on the “Kern’s” starboard side?

A. What difference did it make to me?

Q. Yes.

A. You didn’t suppose I wanted to run into her, did you?

Q. Didn’t you just say you starboarded your helm when you reversed full speed astern for the purpose of passing the “Kern” on your starboard side? Isn’t that what you just said?

A. I said when I put my engines full speed astern I put my wheel hard to starboard at the same time. I seen this object ahead, and knowing the “Elder” was a left-hand wheel she would take this way and throw her bow away from the object ahead as quick as possible.

Q. You did say so as to assist her to throw her bow more rapidly to port?

A. Certainly, I wanted to get clear of the obstruction.

Q. And whatever it was you wanted it on your starboard bow? [339]

A. I wanted to get clear of it.

Q. You wanted it on the starboard bow?

A. Not any bow. I wanted to get clear, was my idea.

(Testimony of W. H. Patterson.)

Q. Was your idea to stop before you reached it or to pass to starboard?

A. Suppose would leave it on the starboard side.

Q. Then you thought you were going to leave it on the starboard bow?

A. I supposed I would leave it on our starboard bow then.

Q. Then what interest did you have in what might be on the starboard side of the "Kern" to prevent your blowing three whistles?

Mr. DENMAN.—You mean directly to starboard side or off?

A. You don't suppose I was going down in there, do you?

Q. Did you expect to pass the "Kern" on her starboard side?

A. After he blowed those whistles, I didn't expect to pass the other side. I expected to back up and get clear.

Q. Why did you starboard your helm then?

A. I told you once.

Q. You didn't expect to pass the other side?

A. I expected to clear him if I possibly could.

Q. You didn't expect to pass the other side?

A. I had to pass the same side—I had to clear him. I thought my ship would probably back fast enough to back clear of the particular object.

Q. You knew what the object ahead was, didn't you? A. I did at that time, yes.

Mr. DENMAN.—What object do you mean—the

(Testimony of W. H. Patterson.)

boat he could see, or the object they were signalling was obstructing the right-hand passage? That is the confusion all along. The witness has been speaking of the boat as the object and some [340] obstruction to passage as the object.

COURT.—He has said he knew it was the “Kern.”

Mr. DENMAN.—That is what I thought. He has made two statements about objects. He has said when he received the signals it indicated there must have been some object to obstruct his passage. Then he testified he must get away from the “Kern” before the collision came—one unseen object the whistle referred to, and one, the “Kern,” he could see plainly, and there is where the confusion is.

Mr. CAMPBELL.—If the Court please, Mr. Denman’s argument is very ingenious, but there isn’t a word in this record as to an obstructing object on the starboard of the “Kern.” Our men have testified they blew the danger signal because of an obstruction there, and I think counsel is unintentionally misleading the Court.

COURT.—No one has said there was an object there, but this witness, as I understand it, says when these signals were given he supposed there was an object to the starboard of the “Kern.” That is about the effect of it.

Q. Well, Captain, the real reason that you starboarded your helm when you backed your engine was a hope on your part that you might be able to swing the bow of the “Elder” far enough to port so she would clear the “Kern,” wasn’t it?

(Testimony of W. H. Patterson.)

A. That was the object, yes.

Q. And you didn't succeed in doing so?

A. We didn't do it, no. We hit her.

COURT.—Did you have any hope of stopping your vessel so she wouldn't reach the "Kern"?

A. I did, sir, yes.

Q. Did you expect to be able to stop the "Elder" before she struck the "Kern"? [341]

A. I was hoping she would.

Q. Did you expect to do so?

A. I thought probably she would, yes, by her being left-hand wheel and swinging that way I could probably do it.

Q. Did you expect to stop before reaching the "Kern"? Or expect to swing clear?

A. Expected both, to swing clear or to stop, if I could.

Q. So you did expect to stop her before she reached the "Kern"? A. Yes.

Mr. DENMAN.—If she swung clear and stopped she wouldn't reach it.

Q. Now, what distance can you stop the "Elder"—bring the "Elder" to a stop?

A. Well, it depends entirely on circumstances.

Q. What circumstances?

A. Depends on the conditions of how the ship is loaded, the draft of the ship, the current and the wind.

Q. Was there any current that night?

A. Well, there is supposed to be slack water there.

Q. Was there any wind that night?

(Testimony of W. H. Patterson.)

A. A little upstream wind.

Q. Was a little wind? A. Yes.

Q. Which way was it blowing?

A. Blowing upstream.

Q. With slack water and with what little wind there was there within what distance could you stop your steamer?

A. Well, that is a thing I never tried with the "Elder."

Q. You haven't?

A. Not going full speed ahead, and then stop and back her full speed?

Q. Yes. [342]

A. No, sir, never did; never had to.

Q. Give us your judgment about it.

A. Well, I couldn't say; she will go a long ways.

Q. Can't you give us your judgment at this time?

A. I don't think so, exactly.

Q. I will see if I can refresh your mind. How many minutes would it take to stop her?

A. I don't know.

Q. What is your judgment about it, Captain?

A. Well, I really couldn't say.

Q. Haven't you any judgment at all?

A. No, I haven't in regard to that at all. I never put her full speed astern. We always slow the ship down a long time before we stop her.

Q. What did you mean when you testified in response to Inspector Edwards' question as follows: "How long does it take the 'Elder,' backing full speed astern, to check her headway? A. Well, I should

(Testimony of W. H. Patterson.)

judge in the neighborhood of probably three minutes. You see we was making—well, yes, in the neighborhood of three minutes. Q. Could her headway be stopped and her going astern within three-quarters of a mile? A. No, sir. Q. It couldn't? A. No, sir. Q. You couldn't reverse and back her full speed astern and check her headway in three-quarters of a mile? A. No, sir." You remember giving that testimony, don't you?

A. It must be so, probably, if that is right there, but you must remember we didn't put her full speed astern until after he came back with his signal—after the second whistle. We went in that three-quarters of a mile a long ways—when we blew the first whistle we slowed her down and kept going, and [343] when the second whistle came back we were still going, and when he blowed the whistles that put me full speed astern I was pretty close to him at that time.

Q. At the time you testified before the Inspectors you thought it was right? A. What?

Q. That was your best judgment at that time?

A. I don't see nothing there to make any difference.

Q. So that is your judgment now—you couldn't stop her within three-quarters of a mile?

Mr. DENMAN.—He said he has never tried it.

A. I have never tried it.

Mr. CAMPBELL.—I object to this.

Mr. DENMAN.—I beg your pardon.

A. Judge, I never tried it. That is all there is to

(Testimony of W. H. Patterson.)

it. I slowed the engines when I blowed the first whistle. Between that and the second whistle my engine was going slow and the ship was going through the water at a rapid start. Then they blew their whistle and as the whistle came back that is the time I told the man to stop the engine and put her full speed astern, but at the same time I was over-reaching all the time, going down the river.

Q. Let me understand you. According to this testimony you gave before the inspectors, you couldn't stop your vessel within three-quarters of a mile.

Mr. DENMAN.—Do you mean, now, with reference to the time he stopped his engine after he had slowed the engine beforehand or when it was going full speed?

Mr. CAMPBELL.—I object to this continual interruption. If the Court please, I don't think I am entitled to be quizzed [344] in accordance with Mr. Denman's habit.

Mr. DENMAN.—I object to the question on the ground that it is ambiguous. It doesn't show which situation he is referring to. There have two situations been testified to. One is what the vessel would do going full speed ahead and then the reverse signal is given, how soon it would stop. The other situation is, she had been going along at a slowed speed, then the order full speed astern was given. I don't know which he refers to. I don't want the witness confused because we must be particular in this. It is purely theoretical. Now, which situation does counsel refer to?

(Testimony of W. H. Patterson.)

Mr. CAMPBELL.—Again I say I am not called upon to be quizzed by counsel.

COURT.—Ask the question again.

Q. Captain, if your steamer is running full speed ahead—exactly what I asked before—if your steamer is running full speed ahead, can you stop her within three-quarters of a mile?

A. Well, as I said a minute ago, it depends entirely upon circumstances—depends upon—

Q. Under the conditions that prevailed there that night, we will say?

A. Well, I ain't able to say. I might have said that there, but I don't know as I could tell exactly. As I said to Edwards at that time, I couldn't tell.

Q. Did you say you could or no, sir, you couldn't do it? When you told Captain Edwards you couldn't. He said, "How long does it take the 'Elder' backing full steam astern to check her headway? A. Well, I should judge in the neighborhood of probably three minutes. You see, we was making—well, yes, in the neighborhood of three minutes." When you made that answer you had in mind the conditions prevailing that night? [345]

A. I might have said that.

Q. (Continues reading:) "Couldn't her headway be stopped and her going astern within three-quarters of a mile? A. No, sir. Q. It couldn't? A. No, sir. Q. You couldn't reverse and back her full speed astern and check her headway in three-quarters of a mile? A. No, sir." Now, you didn't misunderstand Captain Edwards' question, did you?

(Testimony of W. H. Patterson.)

A. I don't suppose I did.

Q. Now, then, you knew then that when you backed your engine full speed astern within a distance of 1,000 to 1,500 feet of the "Kern" it was absolutely hopeless to stop before you reached the "Kern"?

A. No, I didn't. I thought it would swing her far enough so she wouldn't catch us.

Q. To port? A. Yes.

Q. You knew you couldn't stop the ship within that distance?

A. I wasn't sure; might have stopped her.

Q. In the face of your testimony here that you couldn't stop her within three-quarters of a mile, do you mean to say, Captain, now, when you reversed her 300 feet from the stern of the "Kern" you thought you could stop her before she reached the "Kern"?

A. In that question they didn't say anything about conditions at all—whether flood tide or ebb or the wind blowing or anything of the kind.

Q. Were you testifying to flood tide or running on ebb tide? A. Depends.

Q. At this time you answered Captain Edwards' question?

A. I didn't state any tide or any conditions. He didn't ask any conditions. [346]

Q. When you said to Captain Edwards "We was running" and he broke in on you, you had in mind the conditions that night, didn't you?

A. I don't know whether I did or not.

(Testimony of W. H. Patterson.)

Q. Now, then, Captain, when you came around Cooper's Point and gave the first signal, of one blast to the "Kern," you didn't know whether it was safe for you to go by or not, did you?

A. I did at that time, yes.

Q. You did?

A. Yes, because I could see I had this vessel on my port bow and there was an opening there; could have gone through on my own business.

Q. Did you know the conditions ahead?

A. No, as far as I could see at that time and the conditions in the—

Q. You don't know whether it was safe or not?

A. I could go there.

Mr. DENMAN.—Do you contend it wasn't safe in there?

Q. You didn't know it, did you, Captain?

A. Yes, the indications looked favorable to me—it was all right—I could go down with safety.

Q. So you continued on your course?

A. I did, certainly.

Q. Despite the fact you received no response from the "Kern"?

A. I kept on my course because she was on my port bow and I knew I could go by safely, so far as I could see.

Q. Nothing there so you couldn't get through?

A. Not at that time.

Q. Nothing why you should expect to receive a danger signal from the "Kern"?

A. No, I was not looking for a danger signal. As

(Testimony of W. H. Patterson.)

I said, supposed could go on. [347]

Q. So after you rounded Cooper's Point you continued on that belief in your own mind you were going past the "Kern"?

A. That my ship was slowed down and that we could go past her.

Q. Will you answer my question, please?

A. I answered the question.

Q. You thought at that time you would go on past the "Kern"?

A. Certainly I did. I had no reason to believe anything different.

Q. When you did not, as you testified, receive a response to the first whistle to the "Kern," was there any doubt raised in your mind?

A. Not at that time when I blowed the first whistle.

Q. Was there any doubt in your mind when you gave the second whistle?

A. No, not at that time; I was giving the second whistle, but as soon as I give the second whistle he fired the cross-whistles back.

Q. And you gave the second whistle immediately after you gave the first whistle?

A. I did, yes.

Q. Now, what was the reason you slowed down your steamer when you gave the first whistle?

A. We always slow down in passing barges. Daniel Kern asked us to do that.

Q. Then you did know, when you blew the first passing signal that the "Daniel Kern" was ahead

(Testimony of W. H. Patterson.)
with barges, and expected to pass her?

A. Could see her—boats or barges of some description.

Q. That was the reason you slowed the engine?

A. Always, sir.

Q. That is the reason you slowed your engines?

A. Certainly, always slow the engine.

Q. That is the reason, isn't it?

A. I suppose it was. [348]

Redirect Examination by Mr. DENMAN.

Q. Captain, as I understood it, the first whistle that you blew was one-whistle signal, as you passed the Point? A. Yes, sir.

Q. And the second one was when you were about fifteen hundred feet away?

A. Fifteen hundred feet away.

Mr. CAMPBELL.—If the Court please, I object to a leading question. This witness has not testified to fifteen hundred feet away at all. He said immediately after he blew the first one, he blew the second; now counsel comes along and says fifteen hundred feet.

Mr. DENMAN.—That was his direct testimony this morning.

Mr. CAMPBELL.—It was not his direct testimony.

The COURT.—I suppose this is only preliminary to another question?

Mr. DENMAN.—Yes.

The COURT.—Very well, ask it.

(Testimony of W. H. Patterson.)

Mr. DENMAN.—I am correct, am I not, that he answered twelve to fifteen hundred feet this morning?

Mr. CAMPBELL.—He said when he got the first series of two whistles, Mr. Denman, from the other vessel, he was from twelve to fifteen hundred feet away.

Mr. DENMAN.—I want to bring it out then.

Q. How many one-whistle signals, did you blow? When did you blow your first one-whistle signal?

A. When I rounded the point, like.

Q. How far were you from the point, do you suppose? A. Off the point? [349]

Q. How far from the point?

A. Just after I passed the point.

Q. Just after you passed the point; within five hundred feet of it?

Mr. WOOD.—Which way do you mean, off shore?

Mr. DENMAN.—No, no; distance from the point.

The WITNESS.—Down shore. You mean distance off, as I went by after I passed?

Q. The actual distance from your vessel to the point when you first blew the whistle?

A. Oh, probably five hundred feet. It might have been a little more.

Q. How is that?

A. It might have been a little more; I could not tell exactly.

Q. Might it have been more than a thousand feet?

A. We are supposed to blow a half a mile off, and as far as my judgment would allow me, I blew a

(Testimony of W. H. Patterson.)

whistle a half a mile off; see?

Q. The first whistle?

A. Yes, after I got around the point.

Q. Now, how far were you from her when you blew your second whistle?

A. Well, we was getting pretty well down then.

Q. A thousand feet?

A. Yes. We was further than that; between a thousand and fifteen hundred feet.

Q. When was it you got the first response from the "Kern"?

A. Right after I blowed my second whistle, just immediately after I got the second whistle,—after I blowed my second whistle, I meant to say. [350]

Recross-examination by Mr. CAMPBELL.

Q. You remember testifying before the Inspectors, do you not, Captain, that at the time you received the whistles from the "Kern" that you said, "By that time I was down on top of the man"?

A. Oh, I could not have been down there. I could not have been down on top of him. I don't remember saying that at all. I don't think I did say it either.

Q. Don't think you did?

A. No. Even if it is there, I would not believe it.

Q. What is that?

A. Even if it is there, I would not believe it.

Q. What is that?

A. Even if it is there, if I would see it in black and white, I wouldn't believe it.

Q. Can you read it in this record (counsel exhibit-

(Testimony of W. H. Patterson.)

ing transcript to witness), "By that time I was down on top of the man"?

A. Well, that meant I was getting down close to him. It didn't mean I was right on top of the ship.

Q. You did tell that to the Inspectors, "By that time, I was down on top of the man," didn't you?

A. Well, I was down close to the "Kern."

Q. What do you consider close? You gave that to the Inspectors, didn't you?

Mr. WOOD.—Read the question and answer into the record and ask him if that is not the correct testimony.

Mr. CAMPBELL.—(Reading:) "Just give a statement, Captain, [351] of the occurrence, of the matter? A. As it happened? Q. Yes, as it happened, to your knowledge. A. Well, on the 18th, I was going down the river as pilot of the steamer 'George W. Elder,' and before I come to Cooper's Point I met the 'Hercules' about a quarter of a mile this side of Cooper's Point up-river, and he was in tow of his barges, and I blew one whistle to pass to the right, which he answered, and knowing at that time that I would meet the 'Daniel Kern' with a tow down the river somewhere I was on the lookout for her, and as I rounded Cooper's Point, I picked up the 'Daniel Kern' off of Waterford Light, and I blow him one whistle, which I got no answer, and I says to the officer on the deck, 'I wonder what is the matter with that fellow?' And I blow him another whistle. Hold on; I am a little ahead of my story, there. When I blew my first whistle I slowed

(Testimony of W. H. Patterson.)

my ship down, as soon as I blowed my first whistle, and then I blew him another whistle and he didn't answer it immediately, and pretty soon he answered me with two whistles and I put—I says to the officer on the bridge to stop the ship and put her full speed astern, which was done, and then he blowed me two whistles more. By that time I was down on top of the man."

Mr. DENMAN.—Oh, by that time, after he had slowed down.

Mr. WOOD.—Oh, no, Mr. Denman; you are not testifying. Let's get this in just as it was.

The COURT.—You can make your argument later.

Mr. WOOD.—You can argue it later.

Mr. DENMAN.—I know, but I couldn't tell what he meant.

The COURT.—Read on. [352]

Mr. CAMPBELL.—(Reading:) "At the same time he had a searchlight on all the time, which blinded me and blinded the quartermaster in the wheel-house. He was throwing his searchlight around over the river, and on the barges, and up the river, and at times the searchlight was right in the face of me and the man at the wheel. When I first picked up the 'Elder,'—first, when I blowed him one whistle—Inspector EDWARDS.—(Interrupting:) You mean when you first picked up the 'Kern?' A. Yes, sir; when I first picked up the 'Kern,' I could see that I had plenty fairway on the Washington shore down the river; that is when I first sounded my one whistle; and didn't think there

(Testimony of W. H. Patterson.)

was any trouble whatever by me proceeding on the way down the river until he had blown me the two whistles. When I blowed my first whistle I said I slowed her down, and no answer. When I blowed him my first whistle I put my wheel astarboard—hold on—I put my wheel aport to go down the Washington shore, which I knowed I had plenty of room to go through, until I heard the sound of these two whistles; and I could see when he blow his two whistles to me that his barges,—it looked to me that they were headed inshore on the Washington shore, and I could see that his boat was headed in on the Washington shore, and I could see, could tell by the way he was, because I could see his mast headlights and could see his starboard lights coming in view, which would show the ship was headed inshore.” Do you remember giving that testimony?

A. Well, I guess that is right, probably. I could see the reflection. I told him the reflection.

Q. So according to your recollection at that time when the “Kern” blew you the two whistles, you were down on top of the man? [353]

Mr. DENMAN.—No.

A. I didn’t say I was down on top of him; down on top of a ship we consider when we are in a thousand or fifteen hundred feet, we are getting down close to a vessel. That is the meaning of that; that is what I meant.

Mr. DENMAN.—That is not what he stated, either.

The WITNESS.—No, I didn’t say, “I am down on

(Testimony of W. H. Patterson.)

top of him," that means a safe distance away,—that does to a seafaring man.

Q. You know, of course, that searchlight could not be turned around so as to flash upstream, don't you?

A. I don't know anything of the kind. I have never seen a searchlight yet put on a ship you could not twist plumb around. I have had experience with a good many of them for a good many years, a good many hundred and thousand of them, the ships I have been on.

Q. You don't know anything about the "Kern's" searchlight?

A. I have been on the "Kern" when she was the old "Manzanita," when it belonged to the Government, but then I could not say she had a searchlight on it; I can't. Probably Mr. Kern put the searchlight on there; I don't know.

Redirect Examination by Mr. DENMAN.

Q. Now, let me ask you, as you swing to your port, that would make the other vessel appear to swing across your bow to starboard, would it not?

A. As we would swing to port, naturally it would look as though the other vessel,—out of the bow there,—was moving ahead. You would naturally think, because we were swinging [354] over here all the time, and it would naturally make her look as though she was going the other way.

Q. So when you move your vessel around towards the point the other vessel might appear swinging towards the Washington shore?

A. The Washington shore, yes.

(Testimony of W. H. Patterson.)

Q. You heard the testimony here, as a matter of fact, the "Kern" was pointing downstream, didn't you? A. Yes, sir.

Q. That is conceded to be true, isn't it?

A. Yes, sir.

Witness excused. [355]

Testimony of W. H. Pope, for Respondent.

W. H. POPE was next called as a witness on behalf of respondent and having been first duly sworn, testified as follows:

Direct Examination by Mr. DENMAN.

Q. Captain Pope, what is your occupation?

A. Pilot.

Q. How long have you been a pilot?

A. Well, I have been on the Columbia River about twenty-five years.

Q. (By Mr. FULTON.) How long?

A. I have been on the Columbia River, working on the Columbia River as master and pilot for twenty-five years.

Q. Had your license during all that time?

A. Yes, sir.

Q. Have you ever piloted the steamer "Elder"?

A. I have.

Q. How is she to mind her helm? Is she quick or slow? A. Fairly quick.

Q. Fairly quick. Suppose you were going down the stream with the "Elder" at full speed and there was a vessel dead ahead of you five hundred feet off, pointing straight away from you, would you have any

(Testimony of W. H. Pope.)

difficulty passing her? A. I should suppose not.

Q. Presuming now, everything is clear on the starboard side of her, would you have any trouble passing her to starboard?

A. Any trouble to pass to starboard? [356]

Q. Yes. Suppose it is all clear on the starboard side. A. No, sir.

Q. And she is dead ahead of you five hundred feet off, how much do you think you could pass her, how much room could you give her in five hundred feet?

A. Plenty of room to clear.

Q. Plenty of room to clear. Now, suppose you put her back a thousand feet and you begin your man-euver there, would you have any difficulty passing her to starboard? A. No, sir.

Q. Is there any rule of this river, which gives a barge, or a tug with barges, the right to hold up a vessel coming downstream when there is room to pass her?

Mr. CAMPBELL.—If the Court please, we submit that calls for a conclusion of law on the part of this witness.

Mr. DENMAN.—I asked him for the rule of the river, if there is any rule of the river in passing.

A. Not that I know of.

Q. Which way will the "Elder" swing? What sort of a wheel has she, a right-hand or left-hand wheel? A. She has got a right-hand wheel.

Q. What, the "Elder"? A. Oh, the "Elder"?

Q. Yes, the "Elder." A. A left-hand.

Q. She has a left-hand wheel. What course will

(Testimony of W. H. Pope.)

the vessel take if she is going full speed ahead and you reverse full speed astern with her, to her port or starboard?

A. She will throw her stern to starboard.
Q. And her head? A. Her head to port. [357]
Q. To port; and what will her course be, to port?
A. To port.

Cross-examination by Mr. CAMPBELL.

Q. Do you think it would take three-quarters of a mile to stop the "Elder" when she is going full speed ahead in slack water?

A. Well, that is a pretty hard question to answer exactly.

Q. Well, if Captain Patterson testified,—

A. (Interrupting.) I have never tried her exactly, how far.

Q. Captain, is there any rule on the river that permits an overtaking vessel to pass an overtaken vessel without the consent of the overtaken vessel?

A. The rule of the road—

Mr. WOOD.—(Interrupting.) No, we are asking for the rule of the river; not for the law, but for the rule amongst river men. We know what the law is.

Mr. FULTON.—We doubt that.

Mr. WOOD.—You are at perfect liberty to doubt it.

The WITNESS.—We are supposed to follow the law, sir.

Mr. DENMAN.—We don't contend that there is. We don't contend that we had any right to attempt to pass to the starboard if there was anything there

(Testimony of W. H. Pope.)

that warranted giving us a stop signal, four-whistle signal.

Q. Captain, if you were pilot of a vessel which could not be stopped from full speed ahead within three-quarters of a mile, would you run down to within a thousand feet of a steamer ahead without stopping your ship before you got consent to pass her?

[358]

Mr. DENMAN.—Presuming there is plenty of room to pass.

A. When I am approaching a vessel to pass, if I get a danger signal, I put my vessel full speed astern and I answer with three blasts of the whistle to let the other party know that I am backing.

Q. And you aim to give your passing signal at sufficient distance astern of that vessel that you are overtaking, so that if you do get a danger signal, you can stop her before you reach her, don't you?

A. That is the idea. At the same time, sometimes it is pretty hard to do.

Q. But that is what you aim to do? A. Sure.

Q. When you don't get the permission to pass, you don't continue on your course right down on to her, do you? A. Try not to.

Redirect Examination by Mr. DENMAN.

Q. Now, Captain, suppose you are coming down the stream and you see a vessel ahead and you blow one whistle; she is off on your port bow, but pointing the other way, and there is plenty of room to pass her on the starboard side; you blow one whistle and don't get any response and you slow your engine and go on,

(Testimony of W. H. Pope.)

and then blow a second whistle, and then you get a response which is a cross-signal or four whistles, would you then put your propeller full speed astern?

A. I surely would.

Q. Now, would you consider that that was a proper maneuver, described as a whole? [359]

A. That is the only method that will protect a pilot. When he gets a danger signal, he is required to put his vessel full speed astern.

Q. Now, suppose you are a half mile away and you blow your one whistle, you don't get any response, you slow down—that is the proper thing to do, slow down, isn't it? A. Yes, sir.

Q. And then blow another whistle to see if he didn't hear the first, that is what you do, isn't it?

A. I should do so.

Q. And that is all right up to that point, isn't it?

A. Sure.

Q. Then if you get a response of four whistles, that would indicate, that if the way was clear to the right, that the other fellow must see something in that way that would hinder you, wouldn't it?

A. I suppose so.

Mr. CAMPBELL.—If the Court please, that is not asking an expert opinion, but it is putting the answer in the witness' mouth. It is a leading question and not asking for an expert opinion.

Mr. DENMAN.—I am asking what inference would be drawn where the passage looks clear to you and you get four whistles indicating you can't get through there, whether that would not indicate that

(Testimony of W. H. Pope.)

there was something in there which you could not see that the other fellow could?

A. That would indicate danger.

Q. Yes; and if the passageway was clear to you, that would indicate the danger to the other fellow on the passageway [360] that you didn't see, wouldn't it?

A. I would suppose there was either something in the way or he was in the way or would be in the way.

Mr. CAMPBELL.—It would indicate to you there was something in the mind of the vessel ahead which he thought made it improper for you to attempt to pass him as you had indicated by your whistle you desired? A. Sure.

Q. Of course, if there was nothing there to stop you in the fairway, he would have no right to refuse you to go through, would he? A. No.

Mr. CAMPBELL.—Again that is a question of law.

Recross-examination by Mr. WOOD.

Q. No matter how wrong or foolish he was, you would have no right to force your way through against his danger signal?

A. If it was broad daylight and I saw my way clear through I should pass ahead; I should go through. I would exercise the right. But in the night, I should not attempt to go through, because it is impossible for us to see so very far ahead.

Q. And if he happened to have a submerged spar that you didn't see and you carried it away and injured his vessel, you would be in the wrong for disre-

(Testimony of W. H. Pope.)

garding his signal, wouldn't you? A. Sure.

Q. You have handled the "Elder" a good many times? A. Yes, sir. [361]

Q. How far will she swing to port off the right line in going full speed ahead in slack water with her helm hard astarboard set at the beginning of the thousand feet line?

A. Well, she would go at least three points.

Q. And in a thousand feet, how many feet would that make perpendicular to her line of crossing?

A. Well, I would say broad off, off on the beam.

Q. Can you make a guess?

Mr. DENMAN.—He said broad off on the beam.

The WITNESS.—I said she would go a fourth of the way around, at least.

Mr. DENMAN.—In a thousand feet, she would be broad off on the beam? Yes. Then if at the same time the helm was set to starboard, the reverse signal is given and the engines are set full speed astern, the wheel full speed astern, that would have a tendency to throw her stern to starboard and her bow to port, too, wouldn't it? A. Sure.

Q. Now, that would accentuate the bow movement toward the port, or check it, she still going through the water? You see, to make it clear, I will say she was going full speed ahead and at the same instant, her helm was thrown hard astarboard and the reverse signal given and the propeller set full speed astern, now in a thousand feet, will she swing more to the port under those circumstances, than if her propeller had not been set astern?

(Testimony of W. H. Pope.)

A. She won't always do that. I have known vessels that backed to port, when they would get a little swing on a starboard helm to go off just the opposite.
[362]

Q. I am talking about the "Elder." You said you were familiar with it? A. I am.

Q. Now, she has a left-handed propeller?

A. Yes, sir.

Q. And therefore when backing, her stern swings to starboard? A. Yes, sir.

Q. And her bow to port? A. Sure.

Q. Now, then, what I mean is when her helm is to starboard and her bow going to port by the helm also, she is reversed full speed astern, won't that help the port movement of the bow?

A. Yes, sure; although they will sometimes swing much faster backing than they will at other times. You can't bet on them always on the stern movement.

Q. I am talking about the "Elder."

A. Well, I am talking about any steamship.

Q. All we want, this is the "Elder" on trial here.

A. Well, I will say the "Elder."

Q. Yes, say the "Elder."

A. Sometimes she will back quicker than she will at other times on the stern movement.

The COURT.—How do you account for that, Mr. Pope?

A. All vessels are the same. Sometimes it is the current, sometimes it is one thing, sometimes another.

The COURT.—Suppose she was in slack water,

(Testimony of W. H. Pope.)

would she back quicker?

A. Then in perfectly slack water, she ought to back to starboard. [363]

Mr. DENMAN.—One moment. She ought to back to starboard?

A. The stern will go to starboard.

Mr. DENMAN.—Yes.

Q. (Mr. WOOD resuming.) Now, Captain, when a vessel is lying still in slack water, and the "Elder,"—we will talk about the "Elder,"—when the "Elder" is lying still in slack water and her propeller is set full speed astern, long before she has got headway—

Mr. DENMAN.—(Interrupting.) Sternway.

Q. (Continuing.) Sternway, the stern commences to swing to starboard almost with the first revolution, doesn't it? A. Yes, sir.

Q. So that with that lateral movement, the push of the stern over to starboard commences immediately with the first turn of the propeller? A. Yes, sir.

Q. Therefore, wouldn't it be a fact that the vessel still having headway as I have said, just shut off from full speed, and the helm set hard astarboard and then the reverse signal given and the propeller set hard reverse, that that would accentuate the bow movement to port?

A. You mean a vessel going about twelve miles an hour?

Q. Yes, twelve miles, or from ten to twelve.

A. If you let that get a little swing with the helm and then back them, why, of course, it will; but if you

(Testimony of W. H. Pope.)

are going dead ahead, straight ahead and commence to back, it will be some little time before she will make any move at all.

Q. With both the helm hard over and the backing? [364]

A. As I say, she will have to get part of her way off before she will back to starboard.

Q. I am talking about the swing of the bow to the port and the helm hard astarboard?

A. Yes, if you let the steamer go until she is on a swing, before you go to backing her, she will swing quickly.

Mr. DENMAN.—You mean let the rudder catch?

A. Let the rudder—throw your rudder hard astarboard and let her get a swing, a slight swing, then it is all right; but if you go to backing immediately, the rudder thrown hard astarboard don't do so very much good.

Q. What I mean is this: With the helm hard astarboard, does the backing of the propeller help the swinging of the bow to port, or stop it?

A. In dead slack water, if you had your helm astarboard, it would have a tendency to hold her steady. She would go straight astern almost.

Q. That is, when she starts from a position of stationary? A. Perfectly stationary.

Q. Well, now, that is not the question. She has got headway and therefore she has got steerageway?

A. Yes, sir.

Q. The helm is hard astarboard and therefore, having steerageway, her bow is under the influence of

(Testimony of W. H. Pope.)

that swinging to port?

A. If you let her get a start to swing, and then go to backing, sure; but if you go to backing immediately and put your helm hard astarboard, it will take a little while for her to begin to swing.

Q. Even when she has got headway?

A. Yes, sir. [365]

Q. All right. Now, then, would the swing be less if you did not start the propeller than if you did?

A. How is that?

Q. Suppose you did not start the propeller at all, simply left it to the helm? A. To the helm?

Q. Yes, would that swing the greater or less than if both the helm and the propeller were working?

A. She would start off with her helm quicker.

Q. Which would the swing, though, I mean be more?

A. Without backing until she got to swinging. A vessel to swing quickly wants to feel the rudder and then go to backing,—

Q. (Interrupting.) I understand that. Now, you have said that and made that clear. Now, I am saying that, having started to swing, which will she swing quicker, under the influence of just the helm alone, or with both the helm hard astarboard and the propeller reversed?

A. Well, she ought to swing—if a person had plenty of searoom and let the vessel go ahead, she will swing quicker than she will with the helm astarboard and backing; but if you can't drive a vessel ahead, if you have got no room ahead, then you do the best by backing.

(Testimony of W. H. Pope.)

Q. Well, I must confess, it has not been made clear to me yet, the question I have asked. I say, with a vessel going practically full speed, we will say ten miles an hour, through slack water and the helm hard a starboard, and she had commenced to swing and got her swing, will it help that swing or hurt it by reversing the propeller full speed astern? [366]

A. Well, it is pretty near a standoff.

Q. It doesn't make any difference?

A. I said it is pretty nearly a standoff.

Q. How do you reconcile that with the fact that the lateral movement or thrust of the propeller is to send her stern to starboard and immediately commences to reverse?

Mr. DENMAN.—You mean when she is moving or at a standstill?

Mr. WOOD.—Moving.

A. The vessel backs to starboard.

Q. Yes; and that thrust takes effect immediately that the propeller commences to turn?

A. Yes, sir.

Q. Now why, then, doesn't that aid the movement of the bow to port,—

A. (Interrupting.) I mean you reverse your engine and throw your vessel astern, you lose your steerageway with the rudder, as far as the rudder is concerned.

Q. You don't lose it for some time, do you?

A. No, not for some time, but the minute the vessel goes astern—

Q. (Interrupting.) But she is not going astern.

(Testimony of W. H. Pope.)

A. I know she is not going astern, but I mean if her propellers.

Mr. FULTON.—The propeller, you mean.

A. The propeller has a stern movement, she is backing, in other words.

Q. Yes, she is backing, but she is going through the water ahead?

A. If you stop a vessel when she is going at the rate of [367] twelve miles an hour and throw your helm hard astarboard, she will turn pretty quickly herself, let her go. Now, then, on the other hand, if you go to backing, she will back to starboard, but you lose your headway and lose your steerageway with your rudder, as far as your rudder is concerned.

Q. Which loses the most, the propeller or the helm?

A. Well, I said they were pretty near a standoff.

Q. Well, then, if they are pretty near a standoff, it seems to me you have got two forces to work sending the stern around to starboard instead of one; isn't that so?

A. And I said when the vessel was going ahead and you went to backing her, you lost your steerageway as far as the rudder is concerned.

Mr. DENMAN.—How is that, by the disturbance of the waters at the rudder?

A. Well, you stop her way; you stop her steerage.

Mr. DENMAN.—Suppose she is going ahead still, with the water being disturbed by the propeller, does that effect the grip of the rudder on the water when you are reversing? A. Not necessarily so.

(Testimony of W. H. Pope.)

Q. (Mr. WOOD resuming.) Now Captain, can you state about how far the "Elder" herself would swing in a thousand feet with the helm put hard astarboard and the propeller, reversing and she was going at a speed of ten miles an hour, we will say, in slack water?

A. Oh, I could not tell exactly how much she would.

Q. No, of course nobody can tell exactly. About how much? You can guess at it.

Mr. FULTON.—Will you read that question, please.

(Question read.) [368]

Mr. WOOD.—That is, she had that speed at the time the maneuver or operation was commenced, going through slack water ten miles an hour, the helm is put to starboard and the wheel reversed, how far will the bow swing to port in a thousand feet?

A. Well, she ought to swing from a point and a half to two points.

Mr. WOOD.—All right, that is all.

Redirect Examination by Mr. DENMAN.

Q. And what would that be, two or three hundred feet off of your line, or more?

A. A vessel going straight ahead, she ought to swing in that direction,—what do you mean?

Q. Would it be two or three hundred feet off the straight line ahead to port, that it would have gone over, or would it be more than that, three or four hundred feet?

A. Well, she ought to be,—in a thousand feet?

(Testimony of W. H. Pope.)

Q. Yes.

A. She ought to go one hundred and fifty feet off.

Q. That is an estimate; maybe more and maybe less? A. Yes, sir.

Witness excused. [369]

Testimony of Edward Whiteman, for Respondent.

EDWARD WHITEMAN was next called as a witness on behalf of respondent and having been first duly sworn, testified as follows:

Direct Examination by Mr. DENMAN.

Q. Captain Whiteman, how long have you been at sea? A. Since I was fourteen years old.

Q. And how old are you now?

A. Fifty-seven—going on fifty-eight.

Q. What papers do you hold?

A. Chief mate on ocean steamers.

Q. How long have you been that?

A. Fifteen or sixteen years.

Q. Were you a mate on the "Elder"?

A. I am third mate.

Q. How long had you been that at the time of this collision? A. That was the second trip.

Q. That was the second trip. Have you been on her since that time?

A. Afterwards I was, with two or three months between. I was only there temporarily at that time.

Q. I see; then afterwards you came on her?

A. In the fall, yes.

Q. You are familiar with handling her, are you?

A. Yes, sir.

(Testimony of Edward Whiteman.)

Q. How does she swing when you are going ahead at full speed and then reverse full speed astern, which direction will she swing in? [370]

A. She will swing to port; she has got a left-handed wheel, that is, her bow will swing to port.

Q. Her bow will swing to port. Will she make a curving course to port? A. Yes, sir.

Q. As she goes ahead? A. Yes, sir.

Q. Until she is dead in the water? A. Yes.

Q. How does she mind her helm?

A. Quick. That is, when she is in right trim.

Q. What trim was she in on the night of this collision?

A. About four feet by the stern, I should judge.

Q. That was her proper trim to handle her in?

A. Fine trim; yes.

The COURT.—Just a moment. What do you mean by four feet by the stern?

A. Well, she drew four feet more water aft than she drew forward.

Q. How long a vessel is she?

A. Two hundred and fifty feet.

Q. Two hundred and fifty feet. And were you on watch at the time of the collision?

A. I was, sir.

Q. You recollect passing Cooper's Point and coming in sight of the tug and barges on beyond?

A. Yes, sir.

Q. After you had rounded Cooper's Point and sighted them, what course did you steer?

(Testimony of Edward Whiteman.)

A. After we got straightened out, we were steering down for Waterford Light. I think that is the name of it. [371]

Q. And what place were you steering for with reference to those barges?

A. We were steering inside of her, so we had her on the port bow.

Q. So you had her on the port bow? How long was she on your port bow?

A. Well, until she cross-signalled us. We got cross-whistles.

Q. And how far were you away from her when she cross-signalled?

A. Somewhere about twelve hundred feet.

Q. What did you do then?

A. Reversed the engines and put her full speed astern.

Q. And what did you do with your helm, if anything? A. Put her hard astarboard.

Q. What was the result of that?

A. To make her swing, her stern swings to starboard and her bow swings to port.

Q. And what course would she take through the water?

A. Why, kind of a curving course like that (witness illustrating), she was going, she had headway on her so she would go like that (illustrating).

Q. She struck the "Elder," didn't she, on that course. She struck the "Kern" on that course, didn't she?

A. On a swinging course, yes, sir.

(Testimony of Edward Whiteman.)

Q. And did you have a lookout on your vessel?

A. Yes, sir.

Q. The quartermaster at the wheel?

A. Yes, sir.

Q. Was your course clear between your vessel and the Washington shore,—between the "Kern" and the Washington shore, as you came down? [372]

A. Yes, plenty of room.

Q. As far as you could see?

A. Plenty of room.

Q. How did you start this movement to go astern?

What signals did you give?

A. Full speed astern on the engines.

Q. On the engines; and how did you accomplish that?

A. Why, by ringing the telegraph. I rang several times so as to let the engineer know that I wanted all she could stand.

Q. Did you keep that up until she struck?

A. Almost.

Q. Do you know of any rule on this river which permits a tug and tow to hold you up from passing through clear water if there is nothing ahead to obstruct you?

Mr. CAMPBELL.—I object to that, if the Court please, as being immaterial.

A. Not according to the—

Q. (Interrupting.) Do you know of any rule on the river, I mean, to that effect? A. No, sir.

Q. Well, suppose now you were coming downstream,—suppose you had been right behind the

(Testimony of Edward Whiteman.)

“Kern” instead of being off to her starboard and you are five hundred feet from her, with the speed at which you were going, would you have any difficulty in clearing her to starboard from that point?

A. That is two ship lengths; no.

Q. Now, suppose at that thousand feet, would there be any question about it?

A. Not at all. [373]

Cross-examination by Mr. CAMPBELL.

Q. Captain, what was your reason for keeping ringing on the telegraph full speed astern?

A. My reason was to let the engineer know that I wanted all,—I wanted the valve wide open so as to give her all she could stand on the reverse gear.

Q. Didn’t you mean that when you rang her full speed astern the first time?

A. Well, I wanted to impress on him it was necessary to give her all she could stand; we do that all the time.

Q. What was the necessity of that?

A. To impress on the engineers that I wanted her wide open.

Q. But what was the rush about it? What was the reason for it?

A. Because I could see we could hardly avoid a collision.

Q. That was because you could see at that time you were so close to the “Kern,” you would have to have all the steam you could get for you to stop her?

A. Exactly.

(Testimony of Edward Whiteman.)

Q. And even then, there was very grave doubt in your mind as to whether you could stop her?

A. Well, there was.

Q. You say the "Kern" blew two whistles?

A. I was under the impression that she blowed two whistles twice, with a short interval between the two.

Q. But you could not tell whether it was two whistles twice or whether it was four whistles once, could you? [374]

A. Well, I am kind of in doubt about that, but I was under the impression that it was two whistles twice.

Q. But still the interval between them was so short as to leave a doubt in your mind?

A. Oh, yes; there is room for a doubt.

Q. You saw the lights, the towing lights of the "Kern" before you gave your first one-whistle signal, didn't you? A. No.

Q. Didn't you?

Mr. DENMAN.—The towing lights?

A. The towing lights?

Mr. DENMAN.—Yes.

The WITNESS.—What do you mean, her masthead lights?

Mr. WOOD.—Never mind, Mr. Denman. He heard the question. Didn't you hear the question?

Mr. DENMAN.—He didn't understand it.

Mr. WOOD.—What did you understand the question to be?

The WITNESS.—I understood the question to be her towing lights, her masthead lights. That is

(Testimony of Edward Whiteman.)

what you mean by towing lights?

Q. (Mr. CAMPBELL, Resuming.) Well, you saw those before you blew the first whistle, didn't you?

A. No.

Q. You testified before the Inspectors, didn't you?

A. I did, two years and a half ago.

Q. Yes. Your recollection was probably fresher at that time than it is now, wasn't it, Captain?

A. In some instances, it was, yes.

Q. Well, it would be with respect to the lights, wouldn't it, [375] the time that you saw the lights? A. Yes, sir.

Q. This question was asked you by Mr. Fulton: You remember Mr. Fulton being there? A. I do.

Mr. DENMAN.—What page?

Mr. CAMPBELL.—On page 143. He asked you these questions: "Q. What lights did you notice on the 'Kern'? A. I noticed his two towing lights, two masthead lights. Mr. FLANDERS.—When was this?"

Mr. CAMPBELL.—Do you remember Mr. Flanders? A. I do.

Mr. CAMPBELL.—And he asked you this: "When was this? When did you notice his two lights? A. I noticed that when we blew the first whistle. Q. Did you see the side lights? A. I didn't notice any side lights." That was correct, wasn't it?

A. Well, that was nearly correct, but I think I stated something afterwards that by the towing lights I meant I seen the reflection of his towing

(Testimony of Edward Whiteman.)

lights, not the towing lights, but the reflection of them.

Q. Yes; but you saw those at the time you blew the first whistle?

A. The reflection of his towing lights?

Q. Yes; so you knew the "Kern" was down there?

A. That she was heading down towards the river, because they wasn't staring me full in the face; she wasn't heading up the river; I knew that.

Q. But you knew it was the "Kern" down there with the barges? A. I didn't know who it was.

Q. How long had you been on the "Elder" prior to that time? [376]

Mr. DENMAN.—Two trips, he said.

A. That was the second trip.

Mr. CAMPBELL.—Oh, the second trip. I thought you had been regularly on her. That is all.

Redirect Examination by Mr. DENMAN.

Q. You say you blew one approaching passing signal first; did you get any answer to that? A. No.

Q. Where was it you blew that?

A. We blew that when we was rounding Cooper's Point on the starboard helm.

Q. And then you continued on and then you blew,—what did you do after you continued on?

A. Immediately after we blew the first whistle and he didn't answer, I slowed the ship down dead slow.

Q. Then what did you do?

A. Kept on our course.

Q. Then what did you do?

A. Then we blew one more whistle.

(Testimony of Edward Whiteman.)

Q. Yes; you got no response to the first whistle?

A. No response whatever to the first whistle.

Q. Then you blew a second whistle?

A. A second whistle.

Q. Then what came?

A. Then came, as I stated, the two short whistles twice.

Q. What did that indicate to you?

A. It indicated to me that he either wanted us to pass, to go over on the other side, on the Oregon side of him, or else [377] there was an obstruction in the river that I could not see,—that there was danger somewhere.

Q. What did you have to do on the first theory, that he wanted you to go to the left, that there was danger somewhere; what did you have to do?

A. Well, we were so close to him that the only thing we could do was to stop and reverse full speed astern.

Q. For either theory, on either theory?

A. On either theory, we could not do anything else.

Q. Could you tell whether this obstruction, which the whistle indicated, was directly to the starboard?

Mr. CAMPBELL.—If the Court please; I object to counsel constantly inferring in his questions that these whistles indicates obstructions. I think it is a matter for the Court to determine what the danger signal indicated, and not for this counsel to constantly put in the mouths or the minds of these witnesses that it indicated obstructions.

Mr. DENMAN.—One moment. That is not ex-

(Testimony of Edward Whiteman.)

actly what I did. I asked him what it indicated to him.

Mr. CAMPBELL.—Read the question.

Mr. DENMAN.—My last question follows up the first, which was what it indicated to him; he gave an answer; he said that that indicated something alongside or an obstruction in the river that he could not see.

The COURT.—You may answer the question.

A. To my mind, it indicated there was an obstruction somewhere that would not allow us to pass in the direction that we had signalled to him that we wanted to pass.

Q. Could you tell whether that was alongside or behind the other vessel? [378]

A. No, sir.

Q. What were you doing after you began to reverse full speed astern? What were you personally doing on the bridge?

A. What was I personally doing?

Q. Yes.

A. I stood right there by the telegraph.

Q. What were you doing; how were you occupied?

A. After I rang for full speed astern, I stood there with my hand on the telegraph.

Q. Where did you look? A. Right ahead.

Q. What for?

A. Why, to see what was going to happen.

Q. Were you looking for the obstruction?

A. Sure.

(Testimony of Edward Whiteman.)

Recross-examination by Mr. CAMPBELL.

Q. Why didn't you blow the danger signal, Captain, when you didn't get a response to your first one whistle?

A. Why, I didn't blow the danger signal.

Q. Why wasn't the danger signal blown?

A. From us?

Q. Yes.

A. There was no danger as far as we were concerned.

Q. Doesn't the law require you to blow the danger signal if you don't get an answer to your passing signal?

A. No, sir; the law requires us to repeat it.

Q. How soon did you repeat it?

A. I suppose a couple of minutes or so.

Q. A couple of minutes? [379]

A. When he didn't give us a response to our first whistle, I slowed the ship down and then blew again the same signal, one whistle to indicate that I wanted to pass on his starboard with our port side, between him and the Washington shore.

Q. Who told you to slow her down?

A. The pilot.

Q. What revolution was she making when you slowed her down? A. I don't know.

Q. You don't know? How many had you been running before that, fourteen miles?

A. No; you couldn't get fourteen miles out of her in a month of Sundays.

Mr. DENMAN.—Miles, or knots?

(Testimony of Edward Whiteman.)

A. Knots, of course.

Q. What would you say if the Captain testified before the inspectors she would make fourteen miles?

A. I would say that the captain was mistaken.

Q. What about the pilot? A. Also.

Q. Well, now, you say that two minutes elapsed between your first whistle and your second whistle?

A. Well, I could not say exactly like that, but something like it, I presume.

Q. You would not say that the pilot here was wrong when he said the second whistle was blown immediately after the first, would you?

Mr. DENMAN.—I think you are mistaken about that.

A. Immediately after the first? Oh, yes, I would.

Q. You would say he was wrong? [380]

A. I would say he was wrong if he said immediately after. That is, the one whistle and then right after, another?

Q. Well, a short interval.

A. Well, what do you call a short interval?

Q. I am on the witness-stand; you are.

Mr. DENMAN.—He has a perfect right to ask you what you mean by the question.

The WITNESS.—Well, you are asking the question.

Mr. DENMAN.—That is perfectly fair. What do you mean by a short interval? Put it in minutes or seconds.

Q. What was the interval, Captain?

Mr. DENMAN.—He stated it was two minutes.

(Testimony of Edward Whiteman.)

A. Well, I should say something like anything between a minute or a minute and a half, something like that. I wasn't counting the time on my fingers; I had enough to look at without that.

Q. I thought you were just working the telegraph.

A. Well, that is all right. You go there and work the telegraph close to a collision, you will see where you will be.

Q. Oh, you were close to a collision at that time?

Mr. DENMAN.—Which time is this you are referring to?

Mr. CAMPBELL.—I don't like to show any impatience with counsel, but I don't think it is perfectly proper for,—

Mr. DENMAN.—(Interrupting.) It is perfectly fair at this time.

The COURT.—Mr. Denman, I understand he is following up this matter, talking about one thing.

Mr. DENMAN.—But, your Honor, there are two times referred to. The witness was referring to the time after he had given [381] the second signal; Mr. Campbell is referring to the time the first signal was given; and the witness said he could not answer the question. Now, the record will show that.

Mr. CAMPBELL.—Counsel has a very adroit way of breaking in just at the moment you are getting information from the witness you are seeking, a very skillful way, and we are all used to it, if it please the Court. We try to exercise patience, but sometimes

(Testimony of Edward Whiteman.)

that is hard. Will you read the question, please?

(Last question read.)

A. Well, by that time I mean the second signal. We wasn't close to the collision when we gave the first whistle.

Q. But you continued on running towards this vessel without a response at all?

Mr. DENMAN.—When? From when?

Q. You continued running on towards this vessel without a response to your whistle?

A. To which whistle do you mean, the first whistle?

Q. Which whistle did you get a response to?

A. We got a response to the second whistle.

Q. Well, then, which whistle was it you didn't get response to? A. The first whistle.

Q. Then did you continue running on towards her?

A. After slowing the ship down, yes, sir; but we were clear of him; we had him on the port bow.

Q. You did? How far?

A. Oh, about half or three-quarters of a point.

Q. And how far would that bring you off the Washington shore? A. Off the Washington shore?

Q. Yes. [382]

A. Well, it would have brought us away off, clear of the Washington shore. We were all right as far as the Washington shore was concerned.

Q. Bring you about four hundred feet, would it?

A. Yes.

Q. And if you had her a point or three-quarters of a point on your port bow, that would shut out your green light, from her, wouldn't it?

(Testimony of Edward Whiteman.)

A. Our green light?

Q. Shut out your green light from the "Kern," wouldn't it? A. It should, yes.

Q. And if it didn't shut your green light out, then you didn't have her a point or three-quarters on your port bow? A. No, we didn't.

Q. If you saw a vessel coming down astern of you a thousand feet away, showing all three lights, would you think a collision was imminent?

Mr. DENMAN.—A thousand?

Q. If you saw a vessel coming down astern of you, showing all three lights, and when you were a thousand feet distant, would you think there was danger of collision? A. Yes, sir.

Q. What would you do?

A. It was according to which—

Q. (Interrupting.) Which vessel you were on?

A. No, not exactly which vessel I was on,—how much room I had.

Q. If you were on the vessel being overtaken, you would blow the alarm signal, wouldn't you?

A. Not if I got the right passing signal from the vessel [383] that was overtaking me; it was my duty to respond to his signal and let him pass the way he designates to me that he wants to pass.

Q. It is your duty not to attempt to pass until he gives you permission to do so? A. No.

Q. Is that right? A. That is right.

Q. Now, supposing that you saw a steamer coming right down straight at you a thousand feet away, showing all three lights, wouldn't you think there was

(Testimony of Edward Whiteman.)
some danger of collision?

Mr. DENMAN.—He just answered that question.

Mr. CAMPBELL.—Well, let him answer again,
Mr. Denman.

A. I guess I did answer it, didn't I? I said yes.

Q. Did you blow a long whistle before you rounded
Cooper's Point?

A. We were just rounding Cooper's Point when
we blew the whistle.

Q. Yes, but did you blow a long blast that is re-
quired for a steamer approaching a bend before you
reached Cooper's Point? A. There was no bend.

Q. Well, then, you could see the "Kern" above
Cooper's Point, could see the lights on the water?

A. I could see some lights of a boat, I didn't know
what it was.

Q. That is, when you were above Cooper's Point?

A. Just coming to Cooper's Point.

Q. When you were above it, I say.

A. When we were above it, yes, a little above it.

[384]

Q. Before you made your turn?

A. Before we made the turn. There is not much
of a turn to make, anyhow.

Q. That was between Eureka Cannery and Cooper's
Point, you mean?

A. Yes. Well, a little above the Point.

Q. And you afterwards saw the lights that turned
out to be the "Kern"—you saw the lights that turned
out afterwards to be the "Kern's"? A. Yes.

Q. The law requires you to blow one long blast if

(Testimony of Edward Whiteman.)

you are coming to a bend you can't see ahead, doesn't it?

A. The law requires us to blow one long blast of the whistle when we turn a curve like this. (Witness illustrating.)

Q. So you can't see ahead?

A. So you can't see ahead.

Q. When you get to a curve that bends so much you can't see ahead, then the law requires you to blow one long blast? A. Exactly.

Q. The turn at Cooper's Point is not that sharp?

A. No, sir.

Q. So when you are above Cooper's Point, you can see your course below Cooper's Point?

A. Yes, sir.

Redirect Examination by Mr. DENMAN.

Q. Suppose, now, you were on the "Kern" that night and you saw the "Elder" coming down,—you didn't see the "Elder" at all; suppose, now, you are in the pilot-house looking ahead, watching and making the lashings on, and you hear one whistle; [385] you turn around and you see a vessel a thousand feet off and it is perfectly clear between you and the Washington shore, eight hundred feet, would you then from the "Kern" regard there was any danger?

A. No, sir.

Q. Why?

A. Well, because there was lots of room to go between me,—you put me on the "Kern," now, do you?

Q. Yes.

A. There is lots of room between me and the shore in the channel so as to clear.

(Testimony of Edward Whiteman.)

Q. Now, if you gave back one whistle in reply, there would be no danger of collision at all, would there? A. Not a bit.

Q. When you say there was danger of collision when the vessel was a thousand feet away from you, you had reference to a condition where there was no exchange of signals? A. Exactly.

Mr. CAMPBELL.—It is for the vessel ahead to determine whether it is safe to pass, isn't it? Isn't that what the law provides? A. Yes, sir.

Q. He hasn't got a right to hold you there if it is safe, has he?

A. She hasn't got a right to cross-signal me under any condition, if there is a safe passage.

Recross-examination by Mr. CAMPBELL.

Q. She had no right to cross-signal you in any event, then? A. Oh, yes. [386]

Q. You can blow cross-signals?

A. She has got a right to stop me from passing if there is danger for me to pass.

Q. How does she do that, by cross-signals, or by danger signals? A. By danger signals.

Q. But she has no right to blow cross-signals? Has she? A. No, but they do it.

Mr. DENMAN.—That is to say, they blow the cross signals to indicate you take the other side?

A. Yes.

Mr. DENMAN.—That is an improper thing to do, but they do it right along?

A. Certainly. We didn't have any room to get on the other side when he did give me the cross-signal.

Witness excused. [387]

Testimony of Harl Asktedt, for Respondent.

HARL ASKTEDT was next called as a witness on behalf of the respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. DENMAN.

Q. You are known as Murphy on the ship, aren't you? A. Yes, sir.

Q. What position did you have on the "Elder" on the night of the collision?

A. I was quartermaster of her at that time.

Q. And where were you as you came down the river that night before the collision—where were you?

A. In the wheel-house, steering the ship.

Q. In the wheel-house, steering the ship. Was there a lookout on the vessel? A. Yes, sir.

Q. Who was on the bridge?

A. Mr. Whiteman and the pilot, Mr. Patterson.

Q. Do you know of anybody else being up at that time? A. No, sir.

Q. Did you give any signals to the "Kern," as you approached her, did you give any signals?

A. Yes, we give—

Q. Did you give any? A. Yes, sir.

Q. What course did you pursue towards the "Kern" after you rounded Cooper's Point?

A. Well, so far as I remember at that time, I see some lights. We had the "Kern" about a half a point on the port bow. [388]

Q. Did you keep on that course down towards her?

A. Yes, sir.

Q. Where did you blow your first signal to her?

(Testimony of Harl Asktedt.)

A. Well, I can't remember the time.

Q. What place?

A. Or the place. I was too busy to attend to the wheel. I don't remember that now.

Q. Well, was it before or after you got to Cooper's Point? A. I don't remember that now.

Q. How long was it before the collision?

A. The first time we blowed the whistle—well, I can't remember that now. It is a long time ago. I don't remember.

Q. Do you know when you blew the second whistle, how far you were from her when you blew the second whistle?

A. Well, about three-quarters of a mile, or something like that.

Q. When you blew the second whistle?

A. No. Then was the first whistle.

Q. Yes. When did you blow your second whistle? How close were you?

A. Well, about an eighth of a mile.

Q. Well, an eighth of a mile from her?

A. Yes.

Q. And do you know what happened then?

A. I got the command to put the wheel aport and then hard starboard.

Q. Hard astarboard? A. Yes, sir.

Q. Were there any commands given to the engine-room? [389]

A. I heard Captain Patterson *sign* out loud to the third mate on the bridge, the officer on watch, to stop her and full speed astern.

Q. Do you know whether that order was executed?

(Testimony of Harl Asktedt.)

Do you know that they did that? Did they do that?

A. Yes, sir.

Q. Could you feel the vessel reversing?

A. Well, I could not make that out. She reversed all right.

Q. She reversed. What direction would that take her?

A. Well, the "Elder" is a left-handed wheel, propeller, and it makes her bow swing to port and stern to starboard.

Q. You finally struck the "Kern," did you?

A. Yes, sir.

Q. Did you get any response to your first whistle? Any answer?

A. So far as I remember, we did get no answer to the first whistle. Then we blowed another whistle. And so far as I remember, there was either two or four; I can't make out if it was two whistles twice or four whistles.

Q. That the "Kern" responded to you?

A. Yes, sir.

Q. And how soon after you got those four whistles did you put her astern?

A. So soon as we got that signal.

Q. How does the "Elder" mind her helm? Is she quick or slow?

A. Well, to be hand-steering and cog-wheels, she handles very good.

Mr. WOOD.—May I ask a question? I didn't hear very well. You say she was hand-steering with cog apparatus? A. Yes, sir. [390]

(Testimony of Harl Asktedt.)

Cross-examination by Mr. CAMPBELL.

Q. I understood you to say, Mr. Asktedt, that you didn't hear any whistles after your first whistle?

A. No, sir.

Q. And then you immediately blew a second one whistle? A. Yes, sir.

Q. Right after you blew your first one whistle?

A. After the second whistle was blown, we received,—

Q. (Interrupting.) Yes, but I am speaking about the whistles that your vessel blew. You blew two whistles, didn't you? A. Yes, sir.

Q. At two different times? A. Yes, sir.

Q. Did you blow your second whistle immediately after your first whistle, right after the first whistle?

A. Yes, sir.

Q. And after the second whistle was blown, you received some whistles from the "Kern"?

A. Yes, sir.

Q. And you could not tell whether it was two two whistles, or four whistles? A. No, sir.

Q. That was because they came so close together?

A. Yes, sir.

Q. Now, at the time that you heard the four whistles from the "Kern," you were right close onto the "Kern," weren't you? A. Yes, sir.

Q. So close onto the "Kern" that your vessel didn't have much time to swing in obedience to her helm and to the reversing of the engine, did she?

[391]

A. Well, I can't say exactly the distance. I was

(Testimony of Harl Asktedt.)

occupied to the wheel that time; I had no time to judge any distance.

Q. Well, you struck the "Kern" almost immediately after you got your wheel hard over to the starboard, didn't you? A. Yes, sir.

Q. You remember testifying to that before the Inspectors?

Mr. DENMAN.—He says it is a fact.

Q. Well, that was the fact, that you struck the "Kern" almost immediately after you got your helm hard over to starboard?

A. I don't remember that now exactly. You know it is a long time ago.

Q. Well, your vessel hadn't swung very much when it struck the "Kern," had it?

A. No; it didn't swing much, as far as I remember.

Q. What is that?

A. I could not see very much; a dark night, you know, and you standing in a wheel-house, you can't see if the ship is swinging.

Q. Your recollection about this was fresher when you were before the Inspectors, wasn't it? You remembered more about it?

A. Yes. Of course, I remembered more about the things at that time.

Mr. DENMAN.—He could not see any better then, Mr. Campbell.

Mr. CAMPBELL.—Beg pardon?

Mr. DENMAN.—He could not see any better.

Mr. CAMPBELL.—I don't know; he may be color blind now and not then.

(Testimony of Harl Asktedt.)

Q. You remember this question: "How far were you away, do you estimate, from the 'Kern' at the time the wheel was pushed [392] hard astarboard? A. Well, I don't know how far; it can't be,—it wasn't far off then; I can't say what the distance might be. No, I can't say no distance. I was busy getting my helm hard over, and after I got it hard over, after that I struck the vessel." Was that right?

A. Yes, sir.

Mr. FULTON.—Well, he doesn't say right after.

Q. Did you strike the vessel right after you got your helm over?

Mr. DENMAN.—What do you mean by right after?

Mr. WOOD.—Soon after?

The WITNESS.—Soon after, right after is supposed to mean.

Q. (Mr. CAMPBELL, Resuming.) Well, was it a very long time, or a short time?

A. It can't be a very long time after. If it had been a long time, we would go clear.

Q. So it was a short time. Do you remember testifying to the questions: "Q. Did she swing or didn't she swing? A. She swung over. Q. She did? A. Yes, sir. Q. She didn't have time to swing much, though, did she? A. Very little. She was stopped, I suppose." Do you remember testifying to that?

A. Yes, I remember some of it.

Q. Well, by that did you mean that her bow didn't

(Testimony of Harl Asktedt.)

go very much to port before she struck?

A. Well, something like that.

Q. You said you heard Captain Patterson giving an order, "Stop and reverse"; how much time was there between the time he stopped and the time he gave the order to reverse? [393]

A. The command was, "Stop her and full speed astern."

Redirect Examination by Mr. DENMAN.

Q. All at once? A. Yes, sir.

Q. Now, as I understand it, you had the "Kern" half a point on your port bow? A. Yes, sir.

Q. You were steering the vessel, weren't you?

A. Yes, sir.

Q. And you crossed over that half-point when you swung, under a reversing propeller? A. Yes, sir.

Q. And struck her? A. Yes, sir.

Q. Now, could it have been a minute or two minutes or three minutes between the time you reversed and the time you crossed over that half-point and struck her?

Mr. CAMPBELL.—I think he ought to ask the witness what time elapsed, not suggest to him any minutes at all.

Mr. DENMAN.—Well, I said one, two or three; it could not have been over that. Now, what was it?

Mr. CAMPBELL.—Suppose it was half a minute, you are suggesting,—

The COURT.—(Interrupting.) Let him answer. Answer what length of time it was.

A. Well, I can't say any time, sir. At that time,

(Testimony of Harl Asktedt.)

the orders was given to me hard astarboard and I was too busy to get that helm hard astarboard, so I can't say no time.

Q. What is this cog apparatus that you speak of?

A. What is that, sir? [394]

Q. What is this cog apparatus that you speak of?

A. Well, this cog-wheel, this hand-steering gear, what we call cog-wheel, is a double drum, two drums.

Q. And you worked that, did you? A. Yes.

Q. That is the quickest way of putting it over, is it?

A. Yes, sir. We have a big brass handle on that wheel where we take the two hands and turn her right around.

Q. So you don't have to handle the spokes on the wheel? A. No.

Q. And that is for emergency use, is it?

A. Yes, sir.

Mr. WOOD.—I would like to have an explanation there. You say that that is the quickest way of putting the wheel over. You mean it is the quickest way that you had on the "Elder"; it is not as quick as steam-steering gear?

A. No, sir; it is the quickest way, I believe, for a hand-steering gear or cog-wheels. It has double drums, and the handle connected to the wheel.

Q. (Mr. DENMAN, Resuming.) Now, you said to the best of your recollection, you heard the first whistle somewhere around three-quarters of a mile away? A. Yes, sir.

Q. You are not definite as to the distance, but it

(Testimony of Harl Asktedt.)

was some distance off, around three-quarters of a mile? A. Yes, sir.

Q. And you heard your second whistle when you were about an eighth of a mile away? A. Yes.

Q. Or thereabouts? A. Yes, sir. [395]

Q. And do you know where this accident occurred on the river, what cannery you were opposite, or what place you were opposite there?

A. I remember I commenced at twelve o'clock, and I believe we passed that Cooper's Point, they call it.

Q. Cooper's Point? And where was the collision; how far below the Point?

A. Well, I can't say how far below the point it was. I came on deck at twelve o'clock and this occurred about after one bell. I can't say exactly the time now; I can't remember, after one bell.

Mr. CAMPBELL.—One bell would be,—

A. (Interrupting.) Half-past twelve.

Mr. DENMAN.—I guess that is all.

Mr. CAMPBELL.—Were you steering by compass or steering on the ranges?

A. I was steering by compass.

Mr. CAMPBELL.—The pilot gave you the course?

A. The pilot gave me the course.

Q. And your attention was directed to watching the compass? A. Yes, sir.

Witness excused. [396].

Testimony of Louis Olson, for Respondent.

LOUIS OLSON was next called as a witness on behalf of the respondent, and having been first duly sworn, testified as follows.

Direct Examination by Mr. DENMAN.

Q. Louis, what was your position, on the "Elder" that night? A. On the lookout.

Q. On the lookout, were you?

A. On the lookout; yes, sir.

Q. You are a seaman? A. Yes, sir.

Q. How long have you been a seaman?

A. About fifteen years.

Q. And deep sea vessels? A. Yes, sir.

Q. On steamers? A. Yes.

Q. And how long had you been on the "Elder"?

A. The last five years before.

Q. Five years; do you recollect seeing the "Kern" off Waterford Cannery as you came down that night?

A. Yes.

Q. Did you blow any whistles to her?

A. I blowed one whistle first.

Q. How far away were you when you blew that first whistle from her?

A. About three-quarters of a mile, I guess.

Q. Where was that with reference to the point, to Cooper's Point? A. To Cooper's Point?

Q. Do you know where Cooper's Point is?

A. No, I don't know where that is. [397]

Q. Do you remember passing around the point before you came there? A. Yes, I remember that.

(Testimony of Louis Olson.)

Q. How far was that point from the place of the collision, do you know?

A. Oh, it was about a thousand feet, I guess.

Q. No, no; this point; how far was this point that you rounded from the place of the collision?

A. I don't remember that.

Q. But you say you gave your first whistle about three-quarters of a mile off? A. Yes.

Q. What did you do then?

A. Well, they blowed another whistle.

Q. What course were you on? Where was the "Kern" then with reference to your bow?

A. He was about a point on the port bow.

Q. About a point on the port bow. How far were you from the "Kern" when the second whistle was blown? A. About a thousand feet, I guess.

Q. What happened then? Did you get any whistles from anywhere else?

A. The first they blowed one whistle. Then they blowed one more,—they didn't answer the first whistle; then they blowed one more and then they answered with two.

Q. I say what happened then?

A. Then she struck.

Q. What did your vessel do before she struck?

A. Stopped. We struck her.

Q. Stopped her? A. Yes. [398]

Q. Did you feel the reverse of the propeller?

A. I could feel them stopping her and then full speed back.

Q. You say she was half a point on your port bow?

(Testimony of Louis Olson.)

A. Yes.

Q. Did you cross over and finally hit her?

A. Yes, sir.

Cross-examination by Mr. CAMPBELL.

Q. Have you been talking this over with the other members of the crew? A. No.

Q. You haven't? A. No, sir.

Q. Did you report the "Kern" to the bridge?

A. Yes.

Q. Where was that, three-quarters of a mile away?

A. Yes.

Q. You knew it was a steamer down there?

A. Well, I saw some river boats passing around there on the other side away over.

Q. Did you see this boat ahead?

A. Yes; I see the lights all right.

Q. You saw the lights all right? A. Yes.

Q. Now, you knew that she was going to strike the "Kern"? You knew that your vessel was going to strike the "Kern" when your engines were put full speed astern, didn't you?

A. Yes, I knew they were going to strike then.

[399]

Q. You were so close to her? A. Yes.

Redirect Examination by Mr. DENMAN.

Q. When you said you hadn't talked that over, you were referring to talking out in the hall, weren't you? A. In the hall?

Q. Yes; you didn't talk it over with the other members of the crew in the hall here? A. No.

(Testimony of Louis Olson.)

Q. You recollect being in Senator Fulton's office the other night and talking it over with all of us, didn't you, last Tuesday night? A. Oh, yes.

Q. With all of us there? A. Yes.

(Witness excused.) [400]

Testimony of Claud Smith, for Respondent.

CLAUD SMITH was next called as a witness on behalf of the respondent, and having been first duly sworn, testified as follows:

Direct Examination by Mr. DENMAN.

Q. Mr. Smith, what position did you hold on the "Elder" on the night of the collision?

A. First officer.

Q. And where were you at the time of the collision?

A. In my bunk.

Q. In your bunk. Did you come out immediately afterward?

A. Why, I came out just shortly before the collision occurred.

Q. Shortly before the collision occurred?

A. At the time the engines reversed, that is what woke me up.

Q. When the engines reversed? A. Yes, sir.

Q. What did you do then?

A. Turned out, got into the first clothes that were handy and went on deck to see what was doing.

Q. Had she struck before you got out on deck?

A. Struck before I got out on deck; yes, sir.

Q. Was she still in the hole when you got there?

A. Well, I don't know about that. I believe she

(Testimony of Claud Smith.)

was backing away when I appeared on deck, as near as I can remember, sir.

Q. Any whistles?

A. I heard four whistles from the "Kern" after I came on deck.

Q. Where did you take the "Elder" to, then?

A. Well, we just backed up and stopped her. I don't know just what the maneuvers were on deck at that time; I was [401] getting a boat over.

Q. I see. Now, what can you say about the "Elder's" steering capacity; is she quick or slow?

A. Ordinarily she is a quick-steering vessel.

Q. When you say ordinarily, was she on that night?

A. Yes; that is, I mean in still water, going at normal speed, she is a good-steering vessel.

Q. Suppose you were five hundred feet astern of a vessel straight astern and you wanted to pass her to starboard and the way was clear to her starboard, would you have any difficulty when you were going at that speed?

Mr. CAMPBELL.—Just a moment. If the Court please, this witness has not been qualified as an expert navigator.

Mr. DENMAN.—Oh.

Q. What was your position on the "Elder" on that night? A. First officer.

Q. How long had you been? What papers do you hold?

A. First officer, unlimited to any ocean.

Q. How long had you held them?

A. Now, as to that I can't say. My license was

(Testimony of Claud Smith.)

made out, I think, in 1906.

Q. And what had you held before that?

A. Second mate, any ocean.

Q. How long had you held that?

A. Well, I had held that perhaps three or four years. That was issued in 1904, as I remember it.

Q. 1904. How long had you been at sea altogether?

A. Well, it is pretty hard to reduce that down to years.

Q. I mean in round figures.

A. Approximately I suppose I had been to sea about eleven or [402] twelve years at that time.

Q. As seaman but afterwards as mate?

A. Afterwards as mate; yes, sir.

Q. And you are now first mate, are you?

A. I now hold first mate's license for steam and master for sail, unlimited any ocean.

Q. Well, let me ask you now, you know how the "Elder" handles, don't you?

A. I have a pretty fair idea, yes.

Q. How long have you handled her?

A. Well, I was in the ship altogether about three years.

Q. Now, suppose you were five hundred feet dead behind the "Kern," pointing straight on her, and she was pointing straight away from you, and there was clear water on her starboard side, would you have any difficulty going at the speed, going at full speed, in clearing her to starboard?

A. I should say we would not. That is, I think we would not. I am willing to swear that we would clear

(Testimony of Claud Smith.)

her without any difficulty by a margin of a hundred and fifty feet, or thereabouts.

Q. And supposing you were a thousand feet astern of her and blew one whistle and got an answer back one whistle, could you clear her under those circumstances? A. Why, most assuredly.

Q. How far would you clear her if you wanted to go as far as you could in that thousand feet?

A. Probably a couple of ship's lengths.

Q. A couple of ship's lengths? A. Yes.

Q. In other words, you would be getting pretty well off— [403]

A. (Interrupting.) By the time she got abreast of the other vessel she would be an angle of forty-five degrees of her and still leaving her.

Q. So if you were on the "Kern" looking back and a thousand feet directly astern of you saw the "Elder" and she blew a one-whistle signal to you indicating she was going to the starboard, would you think there was any risk of collision?

A. I should not; no, sir.

Q. Suppose she was five hundred feet and blew a whistle indicating she was going astarboard, would you think there was any risk of collision?

A. I should not.

Cross-examination by Mr. CAMPBELL.

Q. If you were in command of a steamer like the "Kern," with passengers on board of her, and you saw a steamer, an ocean steamer, coming down showing all three lights heading for you and she got within five hundred feet before she gave a passing signal,

(Testimony of Claud Smith.)

you would not think there was any danger of collision?

A. Under the circumstances on this river I should think nothing out of the ordinary, not greatly out of the ordinary, five hundred feet, even; though that would be close; I will admit that would be close.

Q. Is that the practice on the river?

A. On the river here if you will make a trip up and down at any time you will find that vessels get in very close quarters to one another, and very seldom have any trouble.

Q. Is that the practice on the river, to run within five hundred feet before they shift their courses?

[404]

A. Well, not ordinarily, but we should not—

Q. (Interrupting.) Is that the practice of the pilots on the—

Mr. FULTON.—(Interrupting.) Wait until he gets his answer finished.

A. Not ordinarily; it is not the practice to get within five hundred feet, though I will say it occurs occasionally. The pilots on the river here are very careful.

Q. Is it the practice of Captain Patterson to run that close?

A. It is not, if he could have avoided it.

Q. You could have avoided it in this case?

A. Now, you are getting back where I don't know anything about it. As I said before, at the time of the collision I was probably getting into my clothes, having been waked up—I was sound asleep—by the

(Testimony of Claud Smith.)
reversing of the engines.

Q. So that it is your judgment—you are the kind of a navigator that would think there was no danger of a collision if you had a vessel five hundred feet astern of you—

Mr. DENMAN.—(Interrupting.) And one whistle was blown?

Mr. CAMPBELL.—What difference whether one whistle was blown or not?

A. I should think there was a reasonable chance of clearance, though as I said before it would be a little too close for comfort.

Q. It would worry you a little bit if you were on the overtaken vessel, wouldn't it? A. Sir?

Q. It would worry you a little bit if you were on the overtaken vessel?

A. Well, I should probably wonder what they were doing [405] back there at that time.

Q. Now, as I understand it, you were awakened by the vibration of the engine reversing?

A. Correctly.

Q. And that is the first intimation that you had that a collision was imminent? A. Yes, sir.

Q. And you were in bed at the time?

A. Asleep; yes, sir.

Q. And you usually retire in your underclothing, do you?

A. Well, I don't usually wear underclothing.

Q. Well, when you dressed what did you do, put on your trousers and your coat?

A. I just slipped into the handiest rags that were

(Testimony of Claud Smith.)

handy. I don't just remember what they were, something handy for getting out on deck in a hurry.

Q. That took you about five or ten seconds to get into them?

A. I would not put it into seconds; probably a little longer than that.

Q. Pretty quick, wasn't it?

A. It was quick anyway.

Q. And before you got out on deck the collision had taken place?

A. The collision had occurred, yes, sir.

Q. You said you heard four whistles from the "Kern" after you came out on deck?

A. After I came on deck I heard four whistles, yes, sir.

Q. That was the alarm signal calling for help after the collision occurred?

A. Probably was, sir. [406]

Mr. DENMAN.—Could the "Elder" have run a thousand feet or so between the time you waked up and the time you got out on deck?

A. Well, that would have been probably less than a minute. I believe she could.

Mr. DENMAN.—When you got out on deck from the speed that you felt she was going you think she would run that distance in that time?

A. Well, now, from the time that the engines reversed she was working under diminishing speed. Her speed was diminishing; her way was diminishing all the time, because her engines were working the other way.

(Witness excused.)

Mr. DENMAN.—We have one other witness in the morning, your Honor, but it will only take a few minutes.

The COURT.—One other witness on your side; and you have two witnesses on your side, Mr. Campbell?

Mr. CAMPBELL.—Yes; and then we will probably call one or two in rebuttal, but they will be very short.

Thereupon court was adjourned until to-morrow morning, Thursday, February 8th, 1912, 10 o'clock A. M. [407]

Thursday, February 8, 1912, 10:00 A. M.

Testimony of Daniel Kern, for Claimant (Recalled).

DANIEL KERN, recalled by the claimant.

Direct Examination.

Questions by Mr. DENMAN :

Mr. Kern, do you recollect requesting pilots to slow down their larger steamships passing your barges? A. Yes, sir.

Q. That is on account of the wash from the steamers?

A. Breaks their lines and disorganizes the tow.

Cross-examination.

Questions by Mr. CAMPBELL:

Have they done so, Mr. Kern?

A. I don't know of them doing it in very many cases. The steamer "Hassalo" is about the only one I have ever seen when I have been traveling up and down the river that did it.

(Testimony of Daniel Kern.)

Q. What was your reason for making the request, Mr. Kern?

A. They will break up our lines and the barges go adrift and water washes over the barges.

Q. How were the pilots in the habit of doing?

A. I never noticed them slow down. Of course, I don't travel up and down a great deal—have made a great many trips, but I never noticed them slow down.

Q. How did you come to make a request of that sort?

A. We had so much trouble with our tows by breaking up, lines breaking, break the guards of our steamers or those barges.

COURT.—That would be the water—

A. That would be the water, the steamer's disturbing the water and making waves.

Witness excused. [408]

Testimony of Edward Anderson, for Libelant.

EDWARD ANDERSON, a witness called on behalf of the libelant (out of order by consent of counsel), being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Mr. Anderson, what is your present position?

A. Chief officer of the "Elmore."

Q. How long have you been a sea-faring or boating man? A. About twenty years.

Q. Have you been a deep-sea sailor?

A. All my life.

(Testimony of Edward Anderson.)

Q. How long have you been on the Columbia River? A. About five years off and on.

Q. Were you on the "Daniel Kern" on August 18th, the night of this collision with the "Elder"?

A. I was.

Q. What was your capacity then?

A. Chief officer.

Q. About what time of day or night did this collision occur? A. About midnight.

Q. What was the "Kern" doing just prior to the collision? A. Making up a tow.

Q. Tow of what? A. Barges.

Q. Loaded or light? A. Loaded barges.

Q. Loaded with what? A. Loaded with rock.

Q. For what place were they taking the rock?

A. For the Government at Fort Stevens for the jetty.

Q. Were they large or small stones for that purpose? A. Oh, twenty-five or fifteen tons. [409]

Q. What would you say was the load of each barge in weight? A. A tow amounts to about 2,700 tons.

Q. About what is the good deep-ship water at that point across the Columbia River?

A. I don't understand the question.

Q. About how wide is what you might call the channel or good going water for deep ships at that point? A. A mile.

Q. About how far off the Washington shore were the "Kern" and barges?

A. Nine hundred or a thousand feet.

Q. And were the barges at anchor or drifting?

(Testimony of Edward Anderson.)

A. Drifting.

Q. What was the position of the "Kern" immediately prior to the collision in reference to the thread of the stream and the Washington shore?

A. Well, we were heading very near down river, a little towards the Washington shore.

Q. Where were you yourself prior to the collision?

A. On the forecastle-head.

Q. Where? A. On the forecastle-head.

Q. Of the "Kern"? A. Yes, sir.

Q. And what were you doing?

A. Getting a line out to make the tow.

Q. What line was it on the "Kern"?

A. Putting out the line on one of the barges—a head-line on one of the barges.

Q. Port or starboard head-line? A. Port-line.

Q. On what barge were you putting it?

A. On the outside barge. [410]

Q. About how was the "Kern" at this time lying in reference to the barges?

A. Why, the barges was lying—as the barges were turned she was lying very near across their stern.

Q. Take those models there, those being the barges and this being the "Kern," and just give a rough illustration of their relative position.

Mr. WOOD.—If no objection by counsel I will interpret that into the record. The port bow of the "Kern" was then against—

A. I put it right on this barge.

Mr. WOOD.—The port bow of the "Kern" was then laying against the stern of the starboard bow.

(Testimony of Edward Anderson.)

A. May not have been the stern; may have been there; may have been like that, but that was about the position the vessel was lying.

Q. Close to the stern? A. Yes, sir.

Q. And swinging off from the stern of the port barge? A. How is that?

Q. And further away, that is, angling?

Mr. DENMAN.—I object to leading the witness.

Mr. WOOD.—I am trying to interpret this position. All right.

Q. Then state the relation of the "Kern" to the stern of the port barge; was she as close to that as she was to the stern of the starboard barge?

A. No, sir. Closer to the starboard barge than she was to the port barge, but she was very close, not very far off.

Q. Have you said which barge you were giving the line on? A. Port barge. [411]

Q. What part of the port barge?

A. The port bitt.

Q. What was the purpose of this so far as the "Kern" was concerned?

A. Why, taking a line there to turn around so as to bring our bow around and work her in here so as to make up the tow.

Q. Had this line been made fast and tightened?

A. Just about.

Q. And was there any other line out?

A. That was all.

Q. Was the tow under control or were you in position to control it? A. No, sir.

(Testimony of Edward Anderson.)

Q. Now, while you were engaged in this work did you see the "Elder" approaching? A. I did.

Q. You have said that you were on the forecastle-head? A. Yes, sir.

Q. Were you there—were you at any other part of the ship just prior to the collision?

A. Not just as it occurred.

Q. So you remained on the forecastle-head all the time? A. Yes, sir.

Q. Did that give you a view up the river toward Cooper's Point? A. Yes, sir.

Q. And you have already said, I think, that you saw the "Elder" approaching? A. Yes, sir.

Q. How was she coming in reference to the "Kern" and in reference to what lights you saw on the "Elder"?

A. I seen all her lights—masthead and both sidelights.

Q. Just name them?

A. Masthead light and both sidelights.

Q. What is known as the sidelights and the running light? [412] A. Yes, sir.

Q. And what did that indicate to you as a navigator as to her line of approach on the "Kern"?

A. Coming head on.

Q. How far away was she in your judgment—the "Elder"—when you first saw her?

A. When I first saw her?

Q. Yes.

A. Well, I didn't know it was the "Elder"; I seen

(Testimony of Edward Anderson.)

a steamer up at Oak Point above a couple of miles, three or four miles.

Q. How far is Oak Point above Cooper's Point?

A. Three miles.

Q. From where the "Kern" was lying at that time and at the time of the collision, can you see beyond Cooper's Point unobstructedly up the river?

A. Yes, sir.

Q. Now, you saw a steamer up the river about two miles? A. Three miles.

Q. Three miles. Did any other steamers pass you? A. No, sir.

Q. When did you next see this steamer?

A. Noticed her again at Cooper's Point when she blew the whistle.

Q. And was she above Cooper's Point or down toward you when she blew that whistle?

A. She had rounded Cooper's Point.

Q. What?

A. She had rounded—she had shifted her course from Cooper's Point.

Q. I wanted to know was that below Cooper's Point, towards you, or above it?

A. At Cooper's Point. [413]

Q. At. And about how far away from the "Kern" would you estimate that to be? When she blew the first whistle?

A. Oh, about a quarter of a mile below her.

Q. What did the "Kern" do in answer to this—these whistles, rather, were they blown for the "Kern"? A. Yes, sir.

(Testimony of Edward Anderson.)

Q. And did the "Kern" answer?

A. Answered with four.

Q. And how soon after the "Elder"—this ship turned out to be the "Elder," did it?

A. Yes, sir.

Q. How soon after the "Elder" blew her one whistle did the "Kern" answer with four?

A. Immediately.

Q. What was the next signal that was exchanged between these vessels?

A. The "Elder" blew one more whistle and the "Kern" blew four more.

Q. And what interval of time elapsed between the "Elder's" blowing her one whistle and the "Kern"—that is, the "Elder" blowing her second whistle and the "Kern" blowing her second four whistles? What interval of time was between them?

A. Very short.

Q. And how soon after the "Kern" blew her second four did the collision occur, in your judgment? A. Very short time.

Q. Can you make an estimate in seconds?

A. Might have been a minute—a minute or so.

Q. What did you do when the "Elder" blew the first whistle or the passing whistle? One whistle is the starboard passing whistle? [414]

A. One whistle is porting your helm.

Q. What is that?

A. One whistle is porting your helm; that is the intention.

Q. It is the whistle to pass to the starboard of the

(Testimony of Edward Anderson.)

“Kern,” isn’t it—one whistle?

A. Yes, starboard of the “Kern.”

Q. Starboard of the “Kern.” Now, what did you yourself do when that first whistle was blown?

A. When the first whistle was blown?

Q. Yes, by the “Elder.”

A. I was getting a line out at that time on the barge when the first whistle was blown.

Q. And you were busy at that? A. Yes, sir.

Q. Did you still continue to observe the “Elder” at all? Look out to see how she was coming?

A. Yes, sir, I did.

Q. Were those same lights still visible?

A. They were.

Q. Were you yourself working at the forecastle-head or were you directing other men?

A. Directing the sailors.

Q. And did you look at all from time to time—keep your eye on the “Elder”?

A. I seen her, yes, sir.

Q. Now, did these bearings in relation to the “Kern” or did the lights as showing the bearing of the “Elder” change from the time that you first saw them head on towards you?

A. The bearing hadn’t changed.

Q. After the “Elder” blew her second one whistle what did you do then?

A. Sung out, “Let go the line.” [415]

Q. Why did you want to let the line go?

A. To try to get clear, seen there was going to be a collision.

(Testimony of Edward Anderson.)

Q. And was the line let go?

A. It was partly gone.

Q. At the time that you sang out to let go the line did you sing out sharply and indicate haste in any way?

Mr. DENMAN.—Please don't lead the witness.

Mr. WOOD.—I beg your pardon.

Q. Well, you may state just the facts at that particular time.

A. Well, the "Elder's" whistle just—when they blew the last whistle I seen there was going to be a collision and the pilot he run in to hook her on and I let go the line, put on full speed for the beach and about that time the collision occurred. That is all there is to it.

Q. Was your line fully let go at the time of the collision? A. Well, it went overboard.

Q. What signal was given on the "Kern" at about this time in relation to her engines turning over?

A. Full speed ahead.

Q. Did you hear that signal? A. I did.

Q. How long before the collision?

A. A couple of seconds.

Q. Did the "Kern" get any headway?

A. I don't think so; didn't pick up much.

Q. Do you know whether the propeller of the "Kern" was working at the time of the collision?

A. Well, I suppose it must have been working at the time of the collision.

Q. You don't know that from observation; you just suppose so [416] because the signal was

(Testimony of Edward Anderson.)

given? A. Yes, that is all.

Q. Now, where was it that the "Elder" struck the "Kern," and to the best of your knowledge at what angle with the fore and aft line of the "Kern"?

A. About a forty-five degree angle.

Q. And that forty-five degree angle bearing forward or aft?

A. Well, from aft—from aft forward.

Q. And at about what point in the hull of the "Kern"?

A. Well, just abaft of my room; I guess about twenty or twenty-five feet from the stern—twenty feet; something like that.

Q. How far did the "Elder" go into the "Kern," do you know? A. Right into her keelson.

Q. Now, then, what change in position as to the "Kern" and the barges was caused by the collision? How did the collision place the "Kern" in relation to the barges?

A. Right athwartships in the river, right across the river.

Q. Well, in relation to the barges themselves?

A. The barges went downstream.

Q. How did it lay her in relation to the barges?

A. I don't understand your question.

Q. Just before the collision she was lying in the relation to the barges that you have placed these models, with the nose of the "Kern" somewhat near to the stern of the starboard barge. Now, when she was hit how did that place the "Kern" in position with reference to the barges?

(Testimony of Edward Anderson.)

A. She lay here and the barge went through this side and broke the three barges adrift and they went down at random; this barge went through this side.

Q. Which barge when you say this barge?

A. The port barge. [417]

Q. And which corner of the— A. Port corner.

Q. And which side of the "Kern"?

A. On the port side of the "Kern."

Q. Then after the collision you may state what you did.

A. I went on the bridge and jumped down aft and looked at the hole and seen she was sinking; went to the engine-room; seen the first assistant and said she was sinking; said go on the barge; and I went forward and I ordered my crew on the barge, and then proceeded to go and get off myself.

Q. What did you do yourself?

A. I got off as soon as I could. I got on to the "Hercules."

Q. How did you get to the "Hercules"?

A. Got hold of a line and was hauled up out of the water.

Q. What width of channel for the "Elder" to pass was there on the port side of the "Kern" and the barges?

A. Oh, there was a quarter of a mile there. On the port side of the barge did you say?

Q. On the port side of the "Kern" and the barges, yes, as they were then lying. The port side, the Oregon side of the river.

A. About a quarter of a mile.

(Testimony of Edward Anderson.)

Q. About what are the lengths of these barges?

A. The length of them?

Q. Yes.

A. One hundred and eighty feet, I think—one hundred and sixty or eighty.

Q. About what is the length of the "Kern"?

A. About a hundred and fifty feet.

Q. And about what is the width of the barges?

A. Forty feet. [418]

Q. Was there any current in the river at the time of the collision?

A. At that time of the year there is always more or less down current.

Q. Well, I want a definite answer in these matters: Was there a current? A. Yes.

Q. Were the barges drifting, moving with the current? A. They were.

Cross-examination.

Questions by Mr. DENMAN:

Let me see, are you a pilot? Were you a pilot on the river at that time?

A. I was mate.

Q. And your business as mate was to make up these tows, wasn't it?

A. Yes, sir, put the lines out—have them put out.

Q. And your practice is—I think it was stated here your practice was to have the three barges lashed together and then the tug goes down and the vessel works in between them and takes them on down the stream. That is correct, isn't it?

A. They come down put together; we receive them

(Testimony of Edward Anderson.)

that way; we try to get in between them.

Q. So they were all solidly put together at the time you received them? A. Yes, sir.

Q. And you simply go in between them, that is correct, is it? A. Yes, sir.

Q. Now, then, suppose the captain of the "Elder" testified—

Mr. WOOD.—Do you mean the captain of the "Elder"?

Q. One moment. I mean the captain just as I said. Suppose [419] the captain of the "Elder" had testified that this was the position of the "Kern" and the three barges. Is that correct? A. No.

Q. Could anybody honestly say that that was the relative position? A. What is that?

Q. Could anybody honestly say that this was the position of the "Kern" and three barges at the time the four-whistle signal was given?

A. Could anybody honestly say if that was the position?

Q. Yes. A. They might, yes.

Q. Was it the position?

A. I don't think it was.

Q. Well, what was the position?

A. I had a position here as near as I can remember. This way I said it was.

Q. That is the way you said it was. Now, I will give you this exhibit. (Libellant's Exhibit 6.) Wasn't that the real position of the "Daniel Kern" at that time? A. Sir?

Q. Isn't that the real position of the "Kern" at

(Testimony of Edward Anderson.)

that time? A. This is the position I said it was.

Q. I asked if that was not the real position.

A. I said the position was here.

Q. Now, wasn't this the real position? A. No.

Q. Weren't you mistaken? A. No.

Q. Now, could anybody looking at that, at that time, have honestly said that that was the position of the two—[420] the barge and the tow? Could they? Could anybody who saw?

A. What is that question?

Q. Could anybody who saw what happened there have said that was the relative position of the two?

A. Yes—so close—they could have; yes.

Q. Now, if you were in this position, your port bow about fifteen feet abaft the stem would be against the starboard corner of the port barge, wouldn't it? That is the way it is described here in this drawing? A. What did you say?

Q. The port bow of the "Daniel Kern" was touching the port barge on her starboard aft corner about fifteen feet abaft the stem of the "Kern"?

A. By that position?

Q. Yes.

A. That is what the position shows; yes.

Q. But you say that instead of that the port bow of the "Daniel Kern" was abaft—was touching—

A. Said it was up here; didn't say it was touching—said it was about here some place.

Q. Then this might have been the position of the two; you might have been mistaken in your statement? A. I don't think so.

(Testimony of Edward Anderson.)

Q. You have a pretty keen recollection of that?

A. Fair.

Q. Pretty good memory? A. Yes.

Q. Now, let me ask you: After the "Kern" was struck how did she lie with reference—just show here. After the "Kern" was struck how did she lie with reference to these barges? What happened? Which way did they swing around? [421]

A. Well, when she was struck—

Q. You said she was there in that position.

A. I said she was in this position.

Q. When she was struck?

A. Yes, this is the way I had them. When she was struck she hit this corner—went through the port side of the "Kern," broke the tow up. After that I don't know; the barges went down the river.

Q. As a matter of fact didn't they lie right alongside like that immediately after struck?

A. I don't remember.

Q. You were there?

A. I ordered the men on the barges and I went below. They might have been there. I know this barge went alongside here and stove in the port side.

Q. Your opinion is that she hadn't—the "Daniel Kern" didn't go forward enough to alter her position in the water before she was struck. That is correct, isn't it? A. I think it is.

Q. Now, what was the condition of the tide at that time? A. I don't remember.

Q. Do you remember whether it was full or slack or— A. I don't know.

(Testimony of Edward Anderson.)

Q. Well, suppose all the other witnesses have testified that it was slack water and there was no current, would you want to contradict them?

A. Yes, I say there was a current.

Q. You say there was a current? A. Yes.

Q. Although every other witness in the case has said there wasn't? A. I don't care.

Q. How far apart were the vessels when you first blew four whistles? [422]

A. How far apart were they?

Q. Yes, in feet.

A. When the first whistles were exchanged?

Q. Yes.

A. Oh, a quarter of a mile—a little more, maybe—something like that.

Q. Might have been a little under?

A. I don't think so—about a quarter of a mile.

Q. Suppose Captain Moran testified just about a thousand feet or a little less; would you want to contradict him on that?

A. I said about a quarter of a mile.

Q. I say would you want to contradict him on that? A. Yes, I say a quarter of a mile.

Q. He was higher up than you, wasn't he?

A. Not a great deal.

Q. And the bridge was between you and the other ship, wasn't it?

A. Oh, you mean the captain of the—

Q. Of the "Kern."

A. I don't understand that question.

Q. Suppose Captain Moran had testified, standing

(Testimony of Edward Anderson.)

on the bridge, that the "Elder" was only a thousand feet off when he blew his first signal, would you want to contradict it? A. I said a quarter of a mile.

Q. I say, knowing he was in that position would you want to contradict him? He would be in a better position to determine the distance apart?

A. I would have the same chance to determine as he would. That height wouldn't make any difference, the short distance.

Q. As I understand, the "Elder" was right behind you at that time. [423] A. Right behind us?

Q. Yes. A. No, sir.

Q. She wasn't? A. No, sir.

Q. Then if the captain had said that he saw her coming from directly astern—would have struck him right amidships the stern if he had gone on, he is mistaken?

A. I have nothing to do with the captain.

Q. I guess you are right about that. But you are certain when you first saw her—when the first whistle was blown she was not directly behind and was not running directly for you amidship?

A. She was not dead astern of us; no, sir.

Q. And was not running for amidship astern of you? A. Amidships astern?

Q. Yes, the middle of your—

A. You mean stern post?

Q. Yes. A. No, not quite the stern post.

Q. And would not, if gone straight on her course, split you right up the middle from stern to bow? She would not have done that?

(Testimony of Edward Anderson.)

A. If she went on our course?

Q. If she had kept on the course that you saw her on when the first four whistles were blown she would not have gone through your stern and split you right up the middle to the bow? A. She didn't.

Q. I ask you if she had kept straight ahead when you first saw her if she wouldn't have struck your stern post and gone straight [424] down the middle and split you right through if she had been a razor?

Q. She never hit her stern post?

Mr. DENMAN.—Please read the question.

(Question read.)

A. No.

Q. In other words, she was going to your side when she blew the four-whistle signal?

A. On our quarter.

Q. And your theory of the case is then—well, suppose, now, the vessel is coming down and she is directly astern of you and a quarter of a mile off and you are running downstream and there is eight hundred feet of water between you and the Washington shore; now, this vessel is coming downstream and she is a quarter of a mile off and she blows one whistle and there is abundant room for her to pass on the starboard side, have you got a right to hold her up if there is nothing to obstruct her on the starboard side?

A. I have if I don't deem it safe to pass in my own judgment.

Q. If there is clear water on that side it is safe for

(Testimony of Edward Anderson.)

her to pass, isn't it? A. I may not deem it so.

Q. But you would deem it so if it were clear water, wouldn't you? A. I don't know.

Q. Why don't you know?

A. Ask me that question again.

Q. You would deem it safe to pass on your starboard side if there were eight hundred feet of clear water and a vessel was signalling for permission to go there when she was a quarter of a mile away? [425]

A. What is the position of the ship I am in?

Q. You are lying dead in the water and eight hundred feet of clear water between you and shore; in other words, you don't have to move to clear. There is plenty of clearance without you assisting; you are lying dead in the water about eight hundred feet clear way between you and the shore and a vessel is a quarter of a mile away and asks permission to pass in that eight hundred feet. Would you consider it was safe for her to try to do so? A. Yes, I would.

Q. And he would be entitled to get permission under those circumstances? A. Yes.

Q. The answer is yes? A. Yes, sir.

Q. Do you remember testifying before the United States Inspectors in this case that if the "Elder"—when she blew the one-whistle signal to which you responded with four whistles that she then had abundant time to clear you to starboard if she had gone through?

A. Do I remember testifying what?

Q. That when the one-whistle blast was blown to

(Testimony of Edward Anderson.)

which you replied with four whistles— A. Yes.

Q. —that there was abundant time in that quarter of a mile for the “Elder” to have passed to your starboard? A. I don’t remember testifying that.

Q. Well, you just stated that there was time.

A. That is all right, I know I did now, but I don’t remember testifying that to the Inspectors; you said I testified that to the Inspectors. [426]

Q. You didn’t testify that to the Inspectors?

A. No, I don’t think so. I don’t remember if I did.

Q. Well, we will presume you didn’t. Now, when a man comes up from the stern and is the pursuing vessel and wanting to pass you—you are ahead—when he blows his one whistle should he commence his maneuver at once or wait for your reply?

A. Wait for a response.

Q. Wait for his response. In other words, if it required him at that time to port his helm or starboard his helm, as the case may be, your idea is that he should blow one whistle, then wait for permission, and if he gets it, then commence his maneuver to pass you. That is correct, is it?

A. It ain’t my idea; that is the law.

Q. That is the law. I am glad to know you have one witness on your side that knows it.

Mr. FULTON.—He should be associated at once with counsel.

Mr. CAMPBELL.—Counsel for the respondent.

Mr. FULTON.—Well, I will withdraw that remark.

(Testimony of Edward Anderson.)

Q. By the way, would you be able to testify whether or not the three barges were pointing upstream just after the collision?

A. No, I could not testify that.

Q. Now, as a matter of fact, it is three years—three or four years since that occurred, isn't it?

A. Some time.

Q. And the details of it are not so very keen in your memory, are they?

A. Some of them are pretty keen.

Q. Those you talked over with counsel before you came here? A. Those are the ones.

Q. I thought so. Did you have a chance to read over this testimony? [427]

A. I read over all of it.

Q. When did you do that?

A. Oh, about two hours ago.

Q. Of course, I haven't had that advantage to talk it over with you. I think we will let that stand.

Redirect Examination.

Q. Mr. Anderson, when you say, answering as a skilled navigator, that with eight hundred feet of clearance in the river on the starboard of a vessel lying dead, and an approaching vessel fifteen hundred feet or a quarter of a mile away, that it was safe to go to the starboard, what condition did you assume the overtaken vessel or the one lying dead, to be in?

A. He just said a vessel lying still; that is all; a lone vessel lying still.

Q. What condition did you assume her to be in?

A. I don't understand your question.

(Testimony of Edward Anderson.)

Q. What condition as to ability to handle herself do you assume her to be in? A. Which vessel?

Q. The overtaken vessel lying still.

A. I can't get. I can't get what you are getting at; I can't understand you.

Q. I will try it another way, then. Come down to this particular case. Had you been in command of the "Kern," and the conditions being as you have described them, the barges lying adrift and loaded—

Mr. DENMAN.—They were fast.

Mr. WOOD.—Not fast to the ground.

Mr. DENMAN.—Oh, I beg your pardon. [428]

Q. The barges lying adrift in the river and loaded; the "Kern" just having approached them with only one line out, and the "Elder" coming, as you say, with all lights visible, a quarter of a mile away, and she had asked permission to pass, what signal would you have given from the "Kern"?

Mr. DENMAN.—I object to that as not being a theoretical question put to an expert. You were asking this case.

Mr. WOOD.—Well, I will ask this case theoretically, then.

Q. Suppose a case of three barges lying adrift in a river, loaded with stone—the barges loaded with stone—lying adrift in the river with, we will say, nearly a mile of channel and eight hundred feet of clearance way on the starboard side of the barges, and a towboat, just approaching those barges to take hold, and get in position, but not yet in position, with only one line out and that not made fast; and a deep

(Testimony of Edward Anderson.)

sea steamer approaching was fifteen hundred feet away, all of her lights coming head on toward the barges, and the tugboat—the approaching vessel blows one whistle to pass to starboard; under those circumstances, you being in command of the tugboat at the barges, what answer would you have given to that whistle? A. Four blasts.

Q. Why?

A. Because my vessel is not under control. And if I leave the barges I leave an obstruction for the other boat to hit.

Q. Now, when you answered the question of counsel that a vessel lying still in the water—that it would have been safe for the approaching steamer to pass to the starboard with eight hundred feet of clearance, what condition, I say, did you suppose the overtaken vessel to be in, in relation to handling herself?

A. I can't get that; I can't get that question through my head. [429]

Q. In other words, you told counsel, upon a suggestion made by him, upon certain facts and conditions, with the vessel lying still in the water and another approaching, with eight hundred feet of clearance it would be safe to go to starboard. Now, in the case I gave you, you said it wouldn't be safe, and you wouldn't permit it. What is the difference between those two cases?

A. The difference is this: He just gave me a lone vessel; he didn't give me a tow.

Q. Did you suppose that lone vessel he gave you to be in full capacity to handle herself?

(Testimony of Edward Anderson.)

A. She was lying still; he didn't say broken down.
Q. Suppose she was broken down, herself.
A. If broken down I would have blowed four whistles.

Recross-examination.

Q. Why?
A. Because the vessel is not under command.
Q. Now, suppose your vessel is lying dead in the water and there is plenty room to clear you to the starboard and you could not move; suppose you were anchored there, could you hold the other vessel upstream as long as you please?

A. I wouldn't have anything to do with the other vessel at all.

Q. Well, if you were lying dead in the water you wouldn't have anything to do with her anyway.

A. I have to let the other man know my boat is not under control—my vessel is not under control—under anchor.

Q. When there is abundant space to starboard?

A. Yes, if you give a signal and there is a collision, then your are responsible.

Q. What is that? [430]

A. That is, if you give a passing whistle and they pass and there is a collision, then the vessel you are in is responsible.

Q. Do I understand you to say, whenever you are making up tows in that position in the fairway, you can hold the other vessel until you can make up the tow?
A. You can, sir.

Q. That is your understanding of the law?

(Testimony of Edward Anderson.)

A. That is the law.

Q. Who told you that? A. I know it.

Q. Anybody tell you?

A. No, sir, I know it. I read it. Read the rules is all you have to read.

Q. The rules of your road say it?

A. The rules don't say anything of the kind. It says, any time you can't give a passing whistle you must call them down or give four whistles.

Q. I asked you where between you, you have a quarter of a mile of fairway, you mean to say because you are—

A. If a man figures there ain't room enough; probably he don't know whether there is room enough.

Q. I see. Your answer is based on the theory that a man doesn't know there is room enough. I say he does know there is room enough. He sees the other fellow starting to make a maneuver and could have cleared—under those circumstances, is he entitled to hold him back?

A. Yes, by the law he is; yes.

Q. Why?

A. Because he couldn't give the passing whistle; his vessel wasn't under control. [431]

Mr. WOOD.—You musn't ask about this particular case; this is a hypothetical question.

Mr. FULTON.—This is your witness.

COURT.—This is cross-examination.

Q. Now, you say that if you are on the bridge of the "Kern" and you see a vessel a quarter of a mile away, and that vessel signals for permission to pass

(Testimony of Edward Anderson.)

to your starboard, and you at that time knew he could pass in safety, if, when he blew the one whistle you had responded at once and he had gone on the course—I am presuming that now—if you knew that, knew that he could pass in safety—that if he had followed the one-whistle signal he would have passed in safety, would you, under those circumstances, have given four whistles?

A. No, if I absolutely knew there was no danger of a collision I would have given him one. If I absolutely knew there was no danger.

Q. That is to say, if you knew he could make that maneuver.

A. If I knew he could; but I would have to be positive if my vessel was not under control.

Q. But in a quarter of a mile of water he can make the maneuver, can't he? A. What is that?

Q. If the "Elder" is a quarter of a mile away, he can make the maneuver easily to pass through that eight hundred feet of clearance?

A. I suppose he can.

Q. Be frank with me.

A. Yes, he can port his helm.

Q. And get over with plenty of room?

A. The "Elder" can port his helm. [432]

Q. He had plenty of time to get over? A. Yes.

Q. If you were in command of the "Elder" you wouldn't have had any difficulty in a quarter of a mile in passing the "Kern" in the position she was in? A. If I was pilot of the "Elder"?

Q. Yes.

(Testimony of Edward Anderson.)

A. I don't think there would have been any collision.

Q. I am not asking you that question. I didn't ask you that. Now, if you had been the pilot of the "Elder" and you had been a quarter of a mile astern and you wanted to pass to the starboard and one whistle is blown, could you have maneuvered so as to clear the "Kern" safely in that quarter of a mile?

A. With the "Elder"?

Q. Yes. With the "Elder."

A. Yes, sir.

Q. Then did you know who was on the "Elder" at that time—who was bringing her down?

A. No, sir; I didn't; not at that time.

Q. So that the action of the "Kern" was in no way controlled by who they thought was running on the "Elder."

A. The man is a personal friend of mine, who was pilot on the "Elder."

Q. Then the situation is this: That if you had believed, when you stood on the bridge of the "Kern," that a competent man was on the "Elder" and she gave the signal a quarter of a mile away, if you believed that at that time she could pass you safely to starboard, you wouldn't have given the four-whistle signal?

A. Yes, would have given the four whistles, the same as was done. [433]

Q. I don't understand; how do you explain your

(Testimony of Edward Anderson.)
answer, if there was plenty of room?

A. Because she is not under control.

Q. What has that to do with it; there is plenty of room to pass.

A. I can't give them the passing whistle.

Q. That is your interpretation of the law?

A. That is the law.

Q. That you say is the reason you would have blown the four-whistle signal?

A. According to the law; yes, sir.

Redirect Examination.

Q. Now, I wish to ask you one question in review of all this: If, under the circumstances, that night, you had been in the "Kern's" place, what whistle would you have blown?

Mr. DENMAN.—I object to that question. That is purely a conclusion of the witness on the facts, not on a hypothetical question.

Mr. WOOD.—Well, as an expert, he knows the facts himself. He is a witness testifying to the facts, and I think it is a proper form in which to put it. There is no use my repeating to him the very facts he has testified to.

Mr. DENMAN.—Well, he has shifted every time—

Mr. WOOD.—We object to the insinuation of counsel—shifting.

Mr. DENMAN.—I beg your pardon; I meant we got in different circumstances every time we put the question. I don't believe the Court has the right to take as an assistant on the facts of the case one of the employees of one of the parties litigant. My under-

(Testimony of Edward Anderson.)

standing of an expert witness or expert testimony, is that it shall be based upon a hypothetical question; that he [434] can't usurp the functions of the Court in deciding the case itself, and that is exactly what this amounts to.

COURT.—This man was in position to see the approach of the vessel from the rear. Why wouldn't it be competent to have him answer now what he would have done?

Mr. DENMAN.—It is purely a matter of opinion, an opinion of the witness on the theoretical question, but the very question in issue which the Court has to decide.

COURT.—What is the difference; I don't see the difference.

Mr. DENMAN.—I will withdraw my objection.

Q. What would you have done under the same circumstances as narrated, and which you, yourself, know, different from what Moran did?

A. You mean would I have done any different?

Q. Yes. What signals would you have given?

A. I would have complied with the rules of the road and blew four whistles.

Q. Now, I thought I made it clear, but counsel is evidently under a misapprehension. You are not in the employ of Daniel Kern or this company now at all, are you? A. No, sir.

Recross-examination.

Q. You were at that time?

A. I were, at that time.

Mr. WOOD.—I thought you meant now.

(Testimony of Edward Anderson.)

Mr. DENMAN.—Oh, no.

Mr. WOOD.—That is all of our direct case.

Witness excused. [435]

Mr. DENMAN.—I now want to put Mr. Moran on the stand for further cross-examination, if I may.

Mr. CAMPBELL.—I object to any further cross-examination of Mr. Moran. If he wants to make Mr. Moran his own witness and call him in direct examination, that is all right.

Mr. WOOD.—It is hardly proper to recall a witness for cross-examination when the other side has closed.

Mr. DENMAN.—Here is the situation. Here are the two men who were on the "Kern," the chief officer and the pilot. For the first time in the case we have heard the testimony of the chief officer, who was right there. We repeat, the case is not closed, so far as they are concerned, and I have discovered matters that I desire to cross-examine their other witnesses on, which I didn't have at the time I cross-examined the first time. It is clearly within the discretion of the Court to allow me to do this. I didn't know what this man was going to testify; I didn't know what your case was at all, until you put your case in.

Mr. WOOD.—Well, we will put it this way, because I am inclined to think that we should not stand on any narrow technical rule of calling, as we have just put on one of our direct witnesses, and have just now, this minute, closed; but, suppose this had been in the regular course of the trial, Mr. Moran having been

(Testimony of Edward Anderson.)

thoroughly cross-examined and released, then this man had come on and testified. I don't think you can recall a witness for the purpose of further cross-examination, in the light of something further developed in the case. You can recall him and make him your own witness; as a hostile witness might be permitted to use leading [436] questions. We have dismissed him, but because you have further light I don't think you have a right to recall him.

Mr. DENMAN.—I have never been refused.

Mr. CAMPBELL.—You cross-examined Mr. Moran on one occasion, and then overnight, having had it under consideration, came back the next morning and asked to cross-examine again, and we gave our consent.

Mr. DENMAN.—That is true, and in the light of some of the things I have heard here I would like to ask further questions.

Mr. CAMPBELL.—Make him your own witness is all we ask; we don't object to that.

COURT.—Do you insist?

Mr. DENMAN.—On cross-examining, if I may.

The COURT.—The Court will exercise his discretion and will allow you to do it. [437]

Testimony of Michael Moran, for Libelant (Recalled).

MICHAEL MORAN was thereupon recalled for further cross-examination and testified as follows:

Further Cross-examination by Mr. DENMAN.

Mr. CAMPBELL.—What page are you referring

(Testimony of Michael Moran.)

to now of the Inspector's Report, Mr. Denman?

Mr. DENMAN.—Page 59.

Mr. CAMPBELL.—I understood that this was for the purpose of getting at matters which were developed by Mr. Anderson.

Mr. DENMAN.—Yes.

Mr. CAMPBELL.—Now, you are referring to the Inspector's Report which you had before you at the time you cross-examined him before.

Mr. DENMAN.—That is very true, but you will see the pertinence of this in a moment.

Q. Mr. Moran, did you hear the testimony of Mr. Anderson, to the effect that the other vessel approached you from the side instead of astern?

A. I don't think I did. I wasn't in here during all of his testimony.

Mr. WOOD.—Wait a minute. I object to that statement, if we are going to be exact, because there is no such testimony in the record. Mr. Anderson said that they were approaching over the port quarter, and that is very different in nautical language to this man, from the side, the starboard quarter, I should say.

The COURT.—This witness has been all over that situation and has testified very minutely as to the position of the "Kern." Now, Anderson comes on and he gives his version as to the [438] position of the "Kern" and the two witnesses don't agree. Now, then, what is the object in calling this witness back again to re-examine him upon the same question?

(Testimony of Michael Moran.)

Mr. DENMAN.—Well, because I have discovered that his testimony before the Inspectors in that regard was practically identical with what Anderson's was this morning.

The COURT.—You want to examine him now as to what you have discovered as to his testimony before the Inspectors?

Mr. DENMAN.—No, but the two things have just come to me as being identical, that the situation as described by Mr. Anderson and as described by this man are identical situations and I didn't realize it until the testimony was given here, the identity of the two when they were testifying there and the disagreement when they testify here.

The COURT.—Well, you may examine as to that. I don't think you ought to go into a re-examination of this witness as to the position of the "Kern."

Mr. DENMAN.—I am going to ask him one question as to whether he testified as to one thing before the Inspectors.

The COURT.—Very well.

Q. Do you remember testifying before the United States Inspectors on being asked concerning what happened just after the impact, the striking of the two vessels, "Did she, in backing off, pull her with her to any extent? A. No, sir, just pulled right out of the little gap that she made. Q. Didn't change her position at all? A. No, sir. You are quite sure of that, are you? A. Yes, sir; I am dead sure of it, only when she was going ahead she changed her position; she swung around at right angles with the river. Q. Who did? A. The 'Elder' did." [439]

(Testimony of Michael Moran.)

WITNESS.—I didn't say the "Elder"—the "Kern" did. If there is anything like that there it is a mistake in the stenographer.

Mr. DENMAN.—Well, you will admit the testimony shows that, will you?

Mr. CAMPBELL.—Yes; but read the next question. It is very evident that it is a mistake.

Mr. DENMAN.—(Reading:) "Q. I am talking about the influence she exercised over the 'Kern'?"

"Mr. FLANDERS.—After she hit?

"Mr. FULTON.—After she hit, yes, when she tried to back away.

"WITNESS.—Oh.

"Q. I assume that the 'Elder' backed away after she hit, did she not?

"A. Yes, sir, she backed out immediately afterward."

Mr. DENMAN.—(Continuing.) Now you see the previous question was, "Did she strike her pretty hard? A. Well, I didn't consider it very hard, but she struck her hard enough to go right in. The 'Elder' is a heavy ship and she don't have to strike very hard. I presume the 'Elder' did all she could. Q. Did she, in backing off, pull her with her to any extent? A. No, sir, just pulled right out of the little gap that she made. Q. Didn't change her position at all? A. No, sir. Q. You are quite sure of that, are you? A. Yes, sir—"

Mr. CAMPBELL.—(Interrupting.) Mr. Denman, when you say, "Didn't change her position at all," whose position—the "Kern's"?

Mr. DENMAN.—The “Elder’s.”

Mr. CAMPBELL.—Not at all. The antecedent is the “Kern” [440] in that question.

Mr. DENMAN.—You see the interrogator had that question in mind and said, “Yes, sir, I am dead sure of it, only when she was going ahead she changed her position; she swung around to right angles with the river. Q. Who did? A. The ‘Elder’ did.” So the interrogator at that moment was trying to find out what that situation was and they said, “Who did?” and he answered, “The ‘Elder’ did.”

Mr. CAMPBELL.—Now, if the Court please, that is a matter of argument. When you come to read those questions you see manifestly that the word “Elder” is used for the “Kern,” because this man was being interrogated about the position of the “Kern.”

The COURT.—The witness was evidently confused when he gave that answer.

Mr. DENMAN.—Well, I have got four other places in the record where he says she was swinging at the time, but this is the only place I have got it where he said she would swing around at right angles.

Mr. CAMPBELL.—What did Senator Fulton mean when he said afterwards, “I am talking about the influence she exercised over the ‘Kern’?” showing Senator Fulton himself understood what it was.

Mr. DENMAN.—No, no; here is the point; the influence she exercised when she struck and when she pulled around afterwards and when she pulled out.

The COURT.—I suggest that you read that part of

(Testimony of Edward Anderson.)

the testimony into the record and the Court will look into it.

Mr. DENMAN.—Yes. I think we have it in now, if the Court please. That is all.

(Witness excused.) [441]

Mr. WOOD.—I would like, with permission of counsel, to recall Mr. Anderson, to simply locate the models here and locate that position he was talking about on the witness stand.

The COURT.—Any objection to recalling Captain Anderson, Mr. Denman?

Mr. DENMAN.—No; no objection.

Mr. WOOD.—It is only to locate what he did here.

**Testimony of Edward Anderson, for Libelant
(Recalled).**

EDWARD ANDERSON was thereupon recalled as a witness by the libelant, and further testified as follows:

Direct Examination by Mr. WOOD.

Q. Take these models of the barges and the model of the "Kern," and call this the Washington shore (counsel drawing pencil line on paper).

The COURT.—You will get that mixed up again. You had better call that the Oregon shore and the Washington shore over next to you.

Mr. WOOD.—I was going to have it as it actually runs, to the right.

Mr. DENMAN.—You will cut it off, won't you, anyway from the others?

Mr. WOOD.—Yes.

(Testimony of Edward Anderson.)

The COURT.—Very well.

Q. (Continuing.) And this would be downstream (counsel drawing arrow indicating); take these models and place them in the relation in which the "Kern" was lying to the barges just before the collision when you were making fast that line.

A. It is pretty hard. There is no river or anything else there. This is downstream (indicating)?
[442]

Q. Downstream is this way (indicating). Here is the Washington shore and the river flowing that way (indicating).

A. Of course, the Washington shore don't run like that.

Q. No, we are not talking about distances; just talking about the relative positions.

A. This is the "Elder" here (indicating)?

Q. Well, that is downstream. No, I haven't marked the "Elder." That is simply to indicate downstream.

WITNESS.—(After arranging wooden models.) If you had the outlines of the land here you could place it. That is the position of the boat.

Mr. FULTON.—You ought to give him a little more paper, really. I mean a little more room. It seems to me that is too small a piece of paper to get it on.

Mr. WOOD.—Oh, well, it will answer the purposes.

(Mr. Wood at this point drew a pencil mark along the outlines of the wooden models as the witness had arranged them on the piece of paper.)

(Testimony of Edward Anderson.)

Mr. FULTON.—Hadn't you better have in the record what you have put there?

Mr. WOOD.—What?

Mr. FULTON.—How you have marked those things?

Mr. WOOD.—When I mark the exhibit that will all speak for itself. Indicate there yourself with the pencil about what line you were getting out to the barges from the "Kern."

(Witness draws pencil line, as requested, at the ends of which Mr. Wood placed the letters A and B.)

Mr. WOOD.—Line A-B. I have marked this the testimony of Anderson, and I now offer it in evidence.

Said paper was thereupon marked by the Reporter, Libelant's Exhibit 10. [443]

Mr. DENMAN.—Now, may I ask counsel for my guidance in further cross-examination which exhibit they contend truly represents the position of these two at the time just antecedent to blowing the whistle?

Mr. WOOD.—Well, we don't say.

Mr. DENMAN.—Well, we must have it in order to—

Mr. WOOD.—(Interrupting.) No; we have put in the testimony of the witnesses, and I want to make it clear by a chart.

Mr. CAMPBELL.—Mr. Denman, you can't break away from your old habit, can you?

Mr. DENMAN.—No, I am entitled to know what position—I am not arguing the case at all; I am en-

(Testimony of Edward Anderson.)

titled to know in the course of the trial, as I understand it, what the position of my opponent is with reference to the facts in the case, what he is trying to prove, and I ask him now which does he contend is the position that he asserts in maintaining his case, the exhibit just put in or the exhibit No. 6.

Mr. WOOD.—Now, in answer to that I would say this: One witness has testified one way and made a chart; another of our witnesses has testified differently, and we are merely perpetuating in a chart what he said in testimony and when we come to argue the case we will argue those two witnesses and the two charts.

The COURT.—I don't think the counsel is called upon to say which position he takes at the present time.

Mr. CAMPBELL.—Counsel might do as he did in the late "Beaver"—"Selja" case, put opposing counsel on the witness-stand and ask him to state his theory of the case.

Mr. DENMAN.—I beg your pardon, I did nothing of the [444] kind. I put him on the stand because he himself testified prior to that time and cross-examined him on his testimony.

Mr. WOOD.—I will say this, Mr. Denman, very frankly, all of these testimonies in cases of this kind are approximate; there are none of them mathematically exact.

The COURT.—I will overrule the request. You may go on with the testimony.

Mr. DENMAN.—Of course I can't cross-examine

without knowing their theory, and I have no further cross-examination.

(Witness excused.)

The COURT.—Have you any other witness?

Mr. DENMAN.—No.

The COURT.—Have you any other witnesses?

Mr. CAMPBELL.—No.

The COURT.—Does that close the case?

Mr. CAMPBELL.—I understood counsel had one witness to call on his part of the case. If he is going to put him on we would like to have him put on before we call our rebuttal.

Mr. DENMAN.—Nothing further.

Mr. CAMPBELL.—You are not going to put the engineer on?

Mr. DENMAN.—Oh, the engineer.

Mr. FULTON.—We tried to get a subpoena served. We issued a subpoena for him. The subpoena has been returned, and I have a letter that was sent down. His headquarters are at Astoria. I had two letters in regard to it; the first letter of January 31st. He says: "I find Mr. Leahy has gone to San Pedro on the 'St. Helens,' but his people expect him here any day this week. [445] If the boat should come in so he would be able to make Portland in time to appear as a witness, I will serve him, otherwise," etc. That was January 31st, 1912. And yesterday I received a letter under date February 6th, which says: "I am returning subpoena which was to have been served on Mr. Leahy, as his boat has not arrived in this port yet. I also return the

check which you enclosed for him. Yours truly, J. V. Burns, Sheriff." There is no deputy marshal there and the marshal advised us to send it to the sheriff.

Mr. CAMPBELL.—What boat is he on, Mr. Fulton?

Mr. FULTON.—This states here that he was on the "St. Helens."

Mr. CAMPBELL.—A vessel plying on the coast.

Mr. FULTON.—Well, I really hadn't heard of the "St. Helens" before. There is the letter.

Mr. CAMPBELL.—It is a steam schooner plying on the coast.

Mr. FULTON.—He says he has gone to San Pedro.

Mr. CAMPBELL.—And you made no effort to get him before the 31st of January, did you?

Mr. FULTON.—Well, that subpoena was issued on the 29th. Ever since the case was set we have been trying to locate the man, sent to San Francisco; I suppose he was there; and they could not locate him there. Finally Mr. Denman wrote to me that they were up here some place.

The COURT.—This is the engineer on the "Elder"?

Mr. FULTON.—Yes, he was an engineer on the "Elder" at the time. Mr. Denman wrote to me just before this subpoena was issued that they were up in this country some place, he and another witness which we found, which was Smith, wasn't it?

Mr. DENMAN.—Yes. [446]

Mr. FULTON.—Smith I think it was. Anyway, one of them was found. Finally I found that he

was living down there and sent the subpoena, and you have the rest.

Mr. CAMPBELL.—What position did he occupy on the "Elder"?

Mr. FULTON.—Engineer; I forget whether the first or second.

The COURT.—Was that subpoena served?

Mr. FULTON.—No. I simply produce this to show the effort we made, your Honor, to get him.

The COURT.—To show why you didn't get him?

Mr. FULTON.—Yes.

The COURT.—Well, what do you want to do about it?

Mr. FULTON.—Well, nothing, only it is simply to explain that we were desirous of having him here and would have produced him had it been in our power to do so. That is all.

The COURT.—You have no other witnesses, then?

Mr. FULTON.—That is all.

Respondent rests. [447]

REBUTTAL EVIDENCE.

Thereupon the following testimony was introduced on behalf of the libelant, in rebuttal:

Testimony of Andrew Hoben, for Libelant (in Rebuttal).

ANDREW HOBEN was called as a witness in rebuttal, on behalf of libelant, and having been first duly sworn, testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Captain, what is your business?

A. Marine surveyor.

(Testimony of Andrew Hoben.)

Q. Were you ever a master mariner?

A. Yes, sir; about twenty-five years.

Q. What kind of vessels? A. Sailing ships.

Mr. WOOD.—Say, Senator, your man is down here at St. Johns, your engineer, if you want to get him.

Mr. DENMAN.—Where is St. Johns?

Mr. WOOD.—Right here in town.

Mr. DENMAN.—Well, that is good.

Q. Were you ever down the river after the "Kern" was sunk? A. Yes, sir.

Q. Were you ever near her foremast where it stuck out of the water?

A. Yes, sir; I was on her deck or on logs that was above her deck. I stood right over the center of her a little abaft the foremast and around the barges. I was down there for a half a day while she was sunk.

Q. Now, Captain, could you from that position see the Eureka Cannery?

Mr. DENMAN.—Now, I object to that, if the Court please. [448]

Mr. CAMPBELL.—If it is that, it is a leading question; I will withdraw it.

Mr. DENMAN.—I am not putting it on that ground at all, but I am putting it on the ground that they opened up this proposition in the main case.

The COURT.—And you claim it is not rebuttal.

Mr. DENMAN.—I claim it is not rebuttal. They opened it up in the main case and called Captain Crowe on the proposition. Now, they can't come back and pile up their additional testimony after we have closed.

(Testimony of Andrew Hoben.)

The COURT.—What have you to say about that, Mr. Campbell?

Mr. WOOD.—We simply anticipated our rebuttal; that was all.

The COURT.—This is a matter which you ought to have put in along with the testimony of Captain Crowe.

Mr. CAMPBELL.—No, if the Court please; the question they asked Captain Crowe wasn't the question which I asked him. I asked Captain Crowe to locate the position of the wreck, and he said that he did locate it.

The COURT.—You want to ask this witness now whether he could see Eureka Cannery from the location of the wreck.

Mr. CAMPBELL.—Exactly.

The COURT.—Very well. You may ask the question. I think they are entitled to it on that ground.

Mr. CAMPBELL.—So the Court may understand, I asked Captain Crowe to locate the position of the wreck, and he said he did so by taking bearings on the tenth window of the cannery.

The COURT.—Now, you want to ask the question whether he could see the cannery from that point by the wreck?

Mr. CAMPBELL.—Yes.

The COURT.—Very well.

Mr. FULTON.—What is this done to meet? [449]

Mr. CAMPBELL.—It is to meet Captain Patterson's testimony that you could not see the position of the wreck until you passed Cooper's Point.

Mr. FULTON.—Which they brought out them-

(Testimony of Andrew Hoben.)

selves entirely, your Honor. It wasn't proper cross-examination as to that, and which they brought out themselves on cross-examination and are bound by the answer.

Mr. WOOD.—I beg your pardon. It was a voluntary statement of Captain Patterson, in which he in order to excuse himself said you could not see past the Point.

Mr. FULTON.—Well, then, we ought to be allowed to introduce testimony, I think, to—

Mr. DENMAN.—Oh, well, we will be able to introduce testimony on this proposition.

Mr. FULTON.—We may want to call Captain Moran and see what he will testify to.

WITNESS.—Just let me state this—

Mr. CAMPBELL.—(Interrupting.) I want you to answer this question: Could you, standing at the wreck of the "Kern," see the Eureka Cannery?

A. Yes, sir, from forty to fifty feet clear of all heights of land.

Cross-examination by Mr. DENMAN.

Q. What is this you have in your hand, Captain?

A. It is a report I made when I went and made the survey on October 3d, 1909.

Q. To whom did you make it?

A. It is to Mr. Kern, who engaged me to locate the position of the ship. In fact, Mr. Kern didn't engage me; it was Mr. Hewitt. [450] Mr. Henry Hewitt asked me to go down and locate the ship and take bearings for Mr. Kern. I went down, and

(Testimony of Andrew Hoben.)

those are notes I helped to prepare of the different bearings and the position of the ship.

Q. You don't want to let me have it?

Mr. CAMPBELL.—Show it to him, Captain. We have no objection.

WITNESS.—All right; with your permission.
(Witness passes report to Mr. Denman.)

Mr. CAMPBELL.—I might say that we have also had Captain Crowe look up his correspondence, the copies which he has, which Mr. Denman wanted, and if he wishes it we will produce it. I simply say this for the purpose of showing there is no desire to withhold them at all.

Mr. DENMAN.—Having looked them over.

Mr. FULTON.—A wise precaution of counsel. He is to be commended.

The COURT.—I ruled on that before.

WITNESS.—I made that report at the time.

Mr. DENMAN.—Well, that is all.

(Witness excused.) [451]

Testimony of J. E. Copeland, for Libelant (Recalled in Rebuttal).

J. E. COPELAND was thereupon recalled as a witness in rebuttal and testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. What has been your experience with respect to ocean-going steamers in charge of river pilots in slowing down while passing the "Kern"?

A. I never knew them to slow down.

(Testimony of J. E. Copeland.)

Q. When she is in tow of loaded barges?

A. I never knew them to slow down.

Q. Have you ever had any difficulty at all with them?

A. We have quite a good deal of difficulty with them, but they never have slowed down.

Mr. DENMAN.—I submit this is irrelevant, your Honor. What practice they follow has nothing to do with this case.

Mr. CAMPBELL.—If the Court please, they went into this matter in their own case.

Mr. DENMAN.—All right; let it go.

Mr. CAMPBELL.—Captain Patterson testified that the reason he slowed when he rounded Cooper's Point, was because he was in the habit of slowing when he passed the "Kern."

Mr. FULTON.—He answered that in response to you on cross-examination, though. We didn't put any proposition of that kind in.

Mr. DENMAN.—I have no objection, your Honor.

The COURT.—You may go ahead.

Q. Captain, will you state whether or not it was physically possible to turn the searchlight of the "Kern" around so as to throw the light back over the stern of the "Kern"? A. It was not. [452]

Q. Why not?

A. Because in the construction of the searchlight there is two flanges, you understand; one works on top, the other on the bottom. A bolt came up through the pilot-house and fastened the bottom

(Testimony of J. E. Copeland.)

flange and another bolt went down through the top flange and fastened the searchlight, and around the heads of these bolts were caps; and it could not be turned more than so as to shine just abeam, no further around either way.

Cross-examination by Mr. DENMAN.

Q. Were you ever tried by the United States Inspectors here for any violation of the rules?

A. I was.

Q. And how many times? A. One time.

Q. What did they do?

A. Suspended my license for five days.

Mr. DENMAN.—That is all.

Mr. CAMPBELL.—Did they suspend your license, or find you at fault, in the collision under trial now?

A. No, sir.

Mr. DENMAN.—Did they try you?

A. No, sir.

(Witness excused.) [453]

Testimony of Michael Moran, for Libelant (Recalled in Rebuttal).

MICHAEL MORAN was recalled as a witness in rebuttal, and testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. How long were you on the "Kern"?

A. At that time?

Q. Yes. A. About three weeks.

Q. Will you state whether or not any of the ocean-going steamers in charge of river pilots were or were not in the habit of slowing down when they passed

(Testimony of Michael Moran.)

these barges in tow of the "Kern"?

A. No, sir; I never knew any of them to slow down.

Cross-examination by Mr. DENMAN.

Q. Could you say that the "Elder" did not slow down this night coming around Cooper's Point?

A. I don't know whether she did or not. They were not in the habit. He asked me if they were in the habit of slowing down when they passed these barges by. They were not in the habit.

Q. Did you see her coming around Cooper's Point?

A. Did I see her?

Q. Yes.

A. I never saw her until they blew the whistle, only when I was heading upstream before I let go of my light barges I saw a steamer at Oak Point.

Q. Could you have seen her before coming around Cooper's Point?

Mr. CAMPBELL.—Now, if the Court please, he is going over this matter again.

A. I testified before the Inspectors I wasn't sure whether I [454] could see her or not, but I thought I could not. That is what I testified to before the Inspectors.

Q. Do you remember testifying as follows:—

Mr. CAMPBELL.—(Interrupting.) If the Court please, he is going back into old matters.

The COURT.—I was just going to say this is not proper cross-examination of what was brought out on the rebuttal. We want to get to an end of this case.

Mr. DENMAN.—Well, I want to ask this one question, if I may, and I think it will prove to be pertinent, and it is a proper interrogation in view of the evidence of this Captain here as to what could be seen up the stream, the expert that was put on; and here is the question: Did you not testify before the—

Mr. CAMPBELL.—(Interrupting.) If the Court please, I object to even asking the question. Does the question relate to the question I have asked him as to the custom of these pilots in passing with the steamers?

Mr. DENMAN.—No. It relates to the testimony of your expert here now as to what could be seen upstream, which is a part of your main case.

Mr. CAMPBELL.—Then you are not confining your cross-examination to matters I have touched upon in my direct examination.

The COURT.—If you want to prove that, Mr. Denman, you will have to make the witness your own witness, because this is not cross-examination of what was brought out. That is to say, the Court would have to give you leave to introduce further rebuttal, or surrebuttal, whatever you might call it, on that matter in this case.

Mr. DENMAN.—Well, I think it is in, your Honor. I will let it go.

(Witness excused.) [455]

**Testimony of Joseph O. Church, for Libelant
(Recalled in Rebuttal).**

JOSEPH O. CHURCH was next recalled as a witness in rebuttal, and testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Captain, will you state whether or not ocean-going steamers in charge of river pilots were or were not in the habit of slowing down when they passed the "Hercules" in tow of barges?

A. I never knew any of them to slow down.

Mr. CAMPBELL.—That is all.

Mr. DENMAN.—That is all.

Cross-examination waived.

(Witness excused.)

Mr. CAMPBELL.—If the Court please, to make the record clear I want to read into it the complete questions and answers which were asked by the Inspectors of Mr. Moran, in respect to which Mr. Denman questioned him and with respect to which Mr. Denman contended that he had testified that the "Elder" was at right angles across the river.

Mr. DENMAN.—What page?

Mr. CAMPBELL.—This is on page 58. (Reading:—)

"Q. Now, when she struck the 'Kern' did she penetrate well into her? A. Yes, sir, pretty well into her.

"Q. Struck her pretty hard? A. Well, I didn't consider it very hard, but she struck her hard enough to go right in. The 'Elder' is a heavy ship and she

(Testimony of Joseph O. Church.)

don't have to strike very hard. I presume the 'Elder' did all she could.

"Q. Did she, in backing off, pull her with her to [456] any extent? A. No, sir, just pulled right out of the little gap that she made.

"Q. Didn't change her position at all? A. No, sir.

"Q. You are quite sure of that, are you? A. Yes, sir, I am dead sure of it, only when she was going ahead she changed her position; she swung around at right angles with the river.

"Q. Who did? A. The 'Elder' did.

"Q. I am talking about the influence she exercised over the 'Kern'?

"Mr. FLANDERS.—After she hit?

"Mr. FULTON.—After she hit, yes, when she tried to back away.

"WITNESS.—Oh!

"Q. I assume that the 'Elder' backed away after she hit, did she not? A. Yes, sir, she backed out immediately afterward.

"Q. Yes. Now, when she backed away, did she draw the 'Kern' after her, or not? A. No, sir, not that I could see; not that I could notice.

"Q. Push her to one side or the other? A. Not when she was backing, she couldn't.

"Q. Did she at any time? A. No. When she struck her going ahead, of course she screwed her right around."

Mr. WOOD.—We want to offer these models that were drawn to scale of the "Elder," the models of the three barges, the "Kern" and the "Elder."

Thereupon the three wooden models representing

the barges were marked Libelant's Exhibit 11, the wooden model representing the "Daniel Kern" was marked Libelant's Exhibit 12, and the wooden model representing the "Elder" [457] was marked Libelant's Exhibit 13.

Proctors for libelant also offered in evidence a photograph, which was marked Libelant's Exhibit 14.

The COURT.—Do you want anything else in the record?

Mr. DENMAN.—This, which is a continuation of what Mr. Campbell read.

The COURT.—Very well.

Mr. DENMAN.—"Q. Which way did she drive her? A. Drove her right clean ahead of her, swung around between the barges. Q. Did she drive her to port or starboard? A. Drove her to port." That is all.

Mr. FULTON.—If the Court please, since counsel has deemed it necessary to put some of this matter in the record there is a matter that we would like to have go into the record so as to explain fully what our contention is Mr. Moran's position was in respect to that, namely, what he did testify to before the Inspectors as to a vessel being concealed as it approached Cooper's Point from the position of the wreck. I would like to read just a short portion into the record.

Mr. CAMPBELL.—I object to it, because it is going back into cross-examination again, upon which your Honor just ruled. It is the very question Mr. Denman asked and your Honor ruled against.

Mr. FULTON.—We have as much right to put this in as they had to put the other in.

Mr. WOOD.—I would like to ask the purpose of this. Are you putting this in as testimony to prove the fact?

Mr. FULTON.—To show what Moran did say. He has given part of it and the Court stopped it. There is no question [458] about this being the record. Let us have it in, just what he did say.

The COURT.—How much is there of it?

Mr. FULTON.—Oh, less than a half page.

The COURT.—You may read it in.

Mr. CAMPBELL.—Under those circumstances will you consent to our going through the record and picking out all the excerpts we want from the testimony of the witnesses?

Mr. FULTON.—We will determine questions as they arise.

The COURT.—Of course, we will have to have an end of this. If this is going to lead to something else I will not allow it.

Mr. CAMPBELL.—It certainly will lead to re-examining Captain Moran.

The COURT.—I will not permit it, then, if it is going to lead to that.

Mr. FULTON.—“Question—

The COURT.—Never mind. I will sustain the objection.

Mr. FULTON.—I thought your Honor said I could read it?

The COURT.—I did say so, but if it is going to open up the case again I will have to rule it out.

Mr. FULTON.—Well, I am sorry I didn't read it quickly.

Mr. DENMAN.—If the Court please, we will try to get this engineer here by two o'clock, but I don't think his testimony is very pertinent.

Mr. FULTON.—What is the use unless they want him? It will be merely cumulative. Unless they want him I would not bother about him.

Mr. DENMAN.—Do you want the engineer, Mr. Campbell?

Mr. CAMPBELL.—It is a question of whether you want him [459] or not. It is usually customary, you know, to call all of the officers.

Mr. WOOD.—We don't want him if you don't. We are not going to go into your camp; it is for you to say.

Mr. DENMAN.—We will try to get him here by two o'clock.

Mr. WOOD.—We are perfectly willing that you shall have him.

After discussion between counsel as to the argument of the case, the court took a recess until two o'clock P. M. of this Thursday, February 8th, 1912.

Thursday, February 8, 1912, 2 P. M.

Mr. DENMAN.—If the Court please, the "St. Helens" has left for sea. She came in unbeknown to us; was in port here and had gone. We were looking for service by the marshal in Astoria and received these letters back and presumed it was all right. I find she left last night and went down the river, and we will be unable to produce this witness now.

Mr. CAMPBELL.—How long was she in port?

Mr. DENMAN.—I don't know. I didn't know she was here. I was astonished when I found she was here.

Filed April 12, 1912. A. M. Cannon, Clerk. [460]

And afterwards, to wit, on Saturday, the 1st day of April, 1916, the same being the 24th Judicial day of the regular March, 1916, term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [461]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines,
etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Minutes of Court—April 1, 1916—Order Referring Matter of Payment of Damages to Special Master.

ORDERED that the matter of ascertaining the amount of the damages to which the libelant Colum-

bia Contract Company may be entitled be referred to Mr. A. M. Cannon as a special master to take the testimony and report the amount of the damages.

April 1, 1916.

CHAS. E. WOLVERTON,
Judge.

Filed April 1, 1916. G. H. Marsh, Clerk. [462]

And afterwards, to wit, on the 5th day of October, 1916, there was duly filed in said court a Report of Special Master, in words and figures as follows, to wit: [463]

In the District Court of the United States for the District of Oregon.

In the Matter of COLUMBIA CONTRACT CO.,
Libelant,
vs.

Steamer "GEORGE W. ELDER,"
Respondent.

Report of the Commissioner upon the Amount of Damages to be Awarded the Libelant Under the Decree Heretofore Entered Awarding Damages.

To the Honorable District Court Above Named:

Pursuant to the order of Court referring the above cause to the undersigned as commissioner to report upon the amount of damages sustained by the libelant in the collision herein, I have the honor to report that the parties with their proctors appeared before me at dates appointed and submitted their proofs, and having considered the same, I adduce therefrom the following:

FACTS.

After the collision and the sinking of the "Kern," libelant notified or requested respondent to raise and repair the vessel, which offer was declined. Thereupon libelant undertook and accomplished the work.

In and about this work the following expenditures, costs and damages were incurred or suffered, viz:

A—RAISING THE VESSEL.

1. Libelant directed to the task an expert as to whose ability there is, and can be, no question. Bringing his skill [464] and experience to the situation, he pursued the most reasonable and feasible plan of raising the boat; indeed, I take it, he adopted the only method that could have been employed, since his work is not questioned by the respondent. The time consumed by him was about eight weeks, during which period there were engaged two crews of men continuously, two barges, a scow, wrecking pumps, cables, and much miscellaneous equipment not necessary to detail, all of which was furnished or hired by libelant. It has offered in evidence an itemized list of these expenditures accompanied by vouchers denoting the payment of each item claimed for, which is marked "Damage Exhibit E" and accompanies this report.

The fact that these sums were actually and necessarily expended by libelant on the job is not, as I understand it, at least so far as the labor is concerned, questioned by respondent, and the labor account must therefore be allowed as claimed, totaling \$10,560.77.

2. Libelant also claims on this account, demur-

rage for the use of two barges, one of 1600 tons and the other 1400 tons, dead weight capacity, pumps, scows, boilers, tackle, engines and other equipment, \$100.00 per day for sixty-three days. It is asserted by respondent that this claim is excessive.

Mr. D. C. O'Reilly, who has navigated boats and barges upon the Willamette and Columbia Rivers for some years, and both let and hired similar outfits, places the reasonable value of the use of this equipment at that date at \$85.00 per day. Being a disinterested and competent witness, I am disposed to take his statement as substantially correct, more especially as respondent offered no countervailing testimony, and this item is therefore recommended to be allowed at the sum of \$5,355.00. [465]

3. The "Kern" was, in effect, pried out of the water. To do this barges were placed alongside and large timbers were passed across the decks of the barges, securely fastened thereto by means of cables passed around the frames, so as to prevent the barges from tipping when the pries were used to lift the "Kern" so that cables might be placed beneath her. This required the tearing up of a considerable portion of the decks and the cutting of the frames of the barges, all of which had to be repaired. Respondent claims this cost ran to \$750.00 on one barge and \$300.00 on the other. The claim is not disputed and the amounts should be allowed. The total cost, therefore, of raising the boat out of the river channel was \$16,956.77.

B—REPAIRING THE "KERN."

The damage to the "Kern" was extensive; she was

cut to the keel, slightly forward of her starboard quarter, practically sliced in two; "she had a twist; her stern was leaning to port and her stem was starboard." In order to be repaired her fastenings had to be loosed a considerable distance forward of the wound and the vessel aft that point was practically rebuilt. Libelant has offered in evidence a detailed list of the expense in this connection, accompanied by vouchers, which is marked "Damage Exhibit I," and accompanies this report. The total of this expense, including labor and material, was \$19,174.83.

No proof has been offered by respondent that these sums were captiously or injudiciously laid out, or that the work could have been done more reasonably, or that what was done was unnecessarily done. I therefore find that these items of expense were reasonably and necessarily incurred. [466]

C—DEMURRAGE.

I find that the "Kern" was out of commission from August 18, 1909, to as late as April, 1910. Libelant makes claim for compensation for the loss of use of boat from the date she was sunk to January 1, 1910, only, at the rate of \$50.00 per day. There is no dispute whatever in the record but that her value for hire upon the open market, at that time, was at least that much per day. I therefore find that demurrage for the time claimed is the sum of \$6,750.00.

CONCLUSIONS OF LAW.

As stated, the fact that in raising and repairing the boat libelant, in good faith, expended the sums of money above mentioned is not seriously questioned. Respondent contends, however, that the cost is far

too great as compared with the value of the boat at the time of the disaster, and that in incurring such expense libelant exceeded its rights. With this idea in view, it has introduced some proof that more was expended in raising and repairing the vessel than she was worth upon the market. Libelant's proof, on the other hand, upon this point, makes the boat worth much more, and I think she was. This raises the only question of law in the case; that is to say, assuming that more was expended in raising and repairing the boat than her actual worth at the time of the collision, was libelant notwithstanding justified in proceeding as it did to raise and repair the boat? As to this, I understand the rule to be that where the owner of a boat, in good faith, proceeds to raise and repair her, when damaged and sunk in a collision, and in doing so finds it necessary to expend more [467] than the total value of the boat at the time of the accident, he may nevertheless recover all such costs from the offender. I assume that it is meant by this that such owner must exercise his honest judgment, must avoid extravagance, and must not captiously start to build an entire new and better boat at the other party's expense. There is no charge of anything of this nature in the record. On the other hand, I am convinced that libelant proceeded with due caution and expended nothing upon the boat, either in raising or repairing her, that was not absolutely required, and the proof is that she was not so good a boat, when repaired, as before the collision. This brings libelant well within the rule, as

illustrated by the following authorities:

Spencer on Marine Collisions, 357;

The America, 11 Blatchf. 445;

The Mary Eveline, 14 Blatchf. 497.

I find, therefore, as matter of law, that libelant is entitled to recover of and from the respondent the sum of \$41,839.83, damages and demurrage herein, together with interest thereon at the rate of six per cent per annum from the 1st day of May, 1910, the date of the completion of the repairs, until paid, together with its costs and disbursements upon this hearing.

I hand up with this report the testimony adduced before me and all the exhibits in connection therewith.

Respectfully submitted, this 5th day of October, 1916.

A. M. CANNON,
Commissioner.

Filed Oct. 5, 1916. G. H. Marsh, Clerk. [468]

And afterwards, to wit, on the 5th day of October, 1916, there was duly filed in said court the Testimony Taken Before the Special Master, in words and figures as follows, to wit: [469]

In the District Court of the United States, for the District of Oregon.

COLUMBIA CONTRACT COMPANY,

Libelant,

vs.

Steamer "GEORGE W. ELDER,"

Respondent.

**Proceedings Had Before Special Master, Portland,
July 17, 1916.**

Portland, Oregon, Monday, July 17, 1916.

IRA A. CAMPBELL and ERSKINE WOOD,
for Libellant.

SANDERSON REED, for Respondent.

Before A. N. CANNON, Commissioner.

Drake O'Reilley	2
Daniel Kern	7 47 56 68 118
Theodore Knudsen	23 74 116
F. A. Ballin (for respondent)	85
R. C. Hart (for respondent)	.93
J. E. Copeland	95 112
William B. Honeyman	98

[470]

Portland, Oregon, Monday, July 17, 1916,
2 P. M.

Testimony of Drake O'Reilly, for Libellant.

DRAKE O'REILLY, a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Mr. O'Reilly, will you state what experience you have had in the business of towing and shipping?

A. Well, I have been in the towing and lightering business on the river here for about sixteen years, and more or less in touch with the shipping business generally. I am a member of the Port of Portland Commission who have more or less to do with it, also.

(Testimony of Drake O'Reilly.)

Q. What is the name of your towing company?

A. We call it the Diamond O Line.

Q. As a part of the business of that company do you rent and hire boats and barges? A. We do.

Q. Are you familiar with the steam tug "Daniel Kern"? A. Yes, I know her pretty well.

Q. What would you say would be the reasonable value per day of the "Daniel Kern" if she were hired out as a bare boat? I will ask you now and then in 1909 or thereabouts.

A. We have to pay when we charter a boat of that power, we have to pay anywhere from forty to seventy-five dollars a day for it according to the supply and demand. I should say in the neighborhood of fifty dollars would be a market price, charter price, would be for a boat of that power.

Q. Do you mean at the present time? [471]

A. Yes, I think if you would get a boat now you would have to pay that for it.

Q. Mr. Reed suggested I should ask you the value at the time when she was sunk, which would be along in 1909. Would it be any different from what you have said?

A. 1909? I don't think it would. I think that a pretty active season. I think towboats of that type were as scarce then as they are now. I don't remember the exact condition of the market then, though.

Q. In the conduct of your business of the Diamond O Line you have a good many barges and scows and things of that kind you rent out and use, etc.?

A. Yes, that is our business.

(Testimony of Drake O'Reilly.)

Q. The barge and towing business is particularly your business? A. Yes.

Q. In raising this steamer "Kern" the following equipment was used: The barge "Washtucna" of a capacity of 1,600 tons dead weight, and barge No. 17, capacity 1,400 tons dead weight. On each barge were two wrecking pumps and two steam boilers, also one hoisting engine, tackles, block wires and connections. Also one scow barge. I would like to ask you what, in your opinion, would be a reasonable charge per day for those barges of that dead weight tonnage I have given and with that equipment?

A. Well, we charge for a barge of six or eight hundred tons capacity, we charge fifteen dollars a day, and a barge a greater tonnage would necessarily be of a relative price, and I should say that that ought to be worth twenty-five dollars a day, anyway.

Q. For each barge, you mean? A. Yes, sir.

[472]

Q. And taking into account the equipment that were on those barges, what would you say as to that?

A. Well, pumps—when we have to rent O. R. & N. wrecking pumps we pay five dollars a day for them and the hoisting engine of an ordinary type we generally have to pay about \$2.50 a day for it. Engines are much more plentiful than pumps. I don't know what the capacity of those pumps are or what the size of the engine.

Q. Well, the libelant here claims that these two barges and the scow with the equipment that I have named, two wrecking pumps, two steam boilers,

(Testimony of Drake O'Reilly.)

hoisting engines, etc., were reasonably worth \$100.00 a day; that is for the whole outfit. Would you say that was reasonable or excessive, or what would you say as to that?

A. Well, was there any outfit besides what you read?

Q. That is all the outfit that I know of; the "Washtucna" of 1,600 tons capacity and No. 17 at 1,400 tons capacity.

A. The two big barges and one scow?

Q. One scow.

A. Well, of course, I put my judgment as to the value of these larger scows at \$25.00 a day. Based on that it would figure up \$85.00—what you would have to pay would figure up about \$85.00 a day.

Q. For the total equipment that I named?

A. Yes, it may be that I put the—the value of the largest scow, it might be worth more. More, depending on what she was worth.

Cross-examination.

Questions by Mr. REED:

In the estimated price of \$50.00 per day for the "Kern" who paid the operating expenses?

A. Operating? Why, this included—there is only one man in [473] charge; that doesn't include any towing. Those prices don't include any towing; that is just one man in charge.

Q. In charge of what? A. Of the barge.

Q. Was the "Kern" a barge?

A. Oh, the "Kern." I thought you said the barge. No, that doesn't include the operating.

(Testimony of Drake O'Reilly.)

Q. So what would be her net profit, then, per day?

A. Her net profit?

Q. Yes. A. Well, it might be nothing.

Q. What?

A. How do you mean? I don't know.

Q. Well, as I understand you—

Mr. WOOD.—I asked him the value of the bare boat on the market, if she were to be hired out as a bare boat. He said \$50.00.

Q. Is it your understanding that they would take the boat and just lease her for \$50.00 as she lay?

A. Yes, sir.

Q. Just as she was?

A. We had to pay at one time \$50.00 a day for the "Sampson" and on top of that we had to pay for the marine insurance, just the raw boat. And based on what the Puget Sound people and the Red Stack people in San Francisco had asked us to pay for the boats when we wanted charter, that is along that neighborhood.

Q. Do you remember whether or not there was any particular demand for boats like the "Sampson"—I mean like the "Kern"?

A. I can't remember just what the conditions were at that time.

Q. All that I understood you to testify to, Mr. O'Reilly, in [474] regard to the scows at the time of the raising, was a *per diem*, per month?

A. Yes.

Q. For the two barges and the small boat?

(Testimony of Drake O'Reilly.)

A. What they might be worth in this market in the river.

Q. *Per diem?* A. Yes, sir.

Witness excused.

Mr. WOOD.—I just called Mr. O'Reilly to let him get away. I have other witnesses on the same line. I am ready to take up these bills as the other witnesses are not here. [475]

Testimony of Daniel Kern, for Libelant.

DANIEL KERN, a witness called on behalf of libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Mr. Kern, what is your position in the Columbia Contract Company, the libelant in this case?

A. President and manager.

Q. Were you occupying the same position in 1909 when this collision occurred? A. Yes, sir.

Q. State whether or not you have rented the "Kern" or the "Sampson" or other of your tugs in this market? A. Yes, sir.

Q. On the Northwest coast here, anywhere?

A. Yes, sir.

Q. Which ones have you rented out?

A. I never rented the "Kern" out. I rented the "Sampson" and the "Biddle."

Q. What are the "Sampson" and the "Biddle"?

A. I rented the river boats out.

Q. What are the "Sampson" and the "Biddle"?

(Testimony of Daniel Kern.)

A. Propeller boats. Same class of boats as the "Kern."

Mr. REED.—Were the "Sampson" and the "Kern" the same class of boats?

Mr. WOOD.—Yes.

Q. Can you state what you got for these boats when you rented them out?

A. We got \$60.00 a day from the port of Portland for the steamer "Biddle," tug "Biddle"; and we had rented the "Sampson" out to Carey in San Francisco for a period of about four [476] months; we had \$200 a day for her. That included the coal and crew. That probably netted us about \$75.00 a day for the boat.

Q. When was that, Mr. Kern?

A. That was in 1907.

Q. When was it you rented the "Biddle"?

A. I think that was last year, 1915.

Q. That is when you got \$60.00 a day for it?

A. Yes.

Q. Was that the bare boat? A. Bare boat.

Mr. REED.—What boat was that for?

Mr. WOOD.—The "Biddle."

Mr. REED.—I move to strike out the testimony of the witness with regard to the "Biddle" for two reasons: In the first place, there is a matter of six or seven years difference in time with regard to time of the contract. In the second place it is an entirely different boat. Where was it, San Francisco; the "Biddle"?

A. Oh, no, here at the mouth of the river.

(Testimony of Daniel Kern.)

Q. I think he has already stated. If he has not I will ask him. Is the "Biddle" a similar boat to the "Kern"? A. Yes, sir.

Q. And how do the general conditions as to the amount you can get for a boat compare now and when you rented the "Biddle," with conditions in 1909?

A. That class of boat is about the same. I rented a tug in Grays Harbor the year before that; I think it was the year before, the "Traveler." I paid \$50.00 a day for her for a period of two months—\$1,500.00 a month.

Q. That is, you rented her? [477]

A. We rented the "Traveler" and she was not as good a boat as the "Kern."

Q. She wasn't as big a boat, was she?

A. Oh, no. That is for the naked boat, without any crew or fuel or anything. And that same year that we rented the "Traveler," I rented the tug "Wallacut" for eight hours a day and paid \$125.00 a day for her.

Q. I suppose that was with crew?

A. With crew.

Q. And fuel? A. Yes.

Q. Now, have you rented these barges?

A. Yes, sir.

Q. Which barges did you use down there in raising the "Kern"?

A. We raised with the barge "Washtucna" and one we called No. 17, I think it was.

Q. What is their capacity, do you remember?

(Testimony of Daniel Kern.)

A. One is about 1,200 tons capacity and the other was 1,600 tons.

Q. Do you remember the equipment they had on them?

A. They had two large pumps and hoisting engines. The biggest one had hoisting engine and boiler and other gear. I don't remember exactly what it was.

Q. Did you have any other equipment there in the shape of scows or anything like that?

A. We had one other small scow.

Q. Have you ever rented out those barges?

A. I only rented—I rented those barges, one of those barges on one occasion for about two months at \$40.00 per day.

Q. Forty dollars per day?

A. Yes, to Mr. Wakefield.

Q. Which one of the barges was it?

A. We had four of them, all exactly the same size.

I think it was the "Wallacut" he had. [478]

Q. But identically the same kind of a barge as the "Washtucna"? A. The same kind of a barge.

Q. When was it you rented to him, what year, I mean?

A. I think it was shortly after that when they started to build the Tillamook Railroad. I don't know exactly what year that was.

Q. How did the market price of barges per day compare when you rented to Wakefield to this time when raising the "Kern"? A. About the same.

Q. Mr. Kern, what in your judgment is a reason-

(Testimony of Daniel Kern.)

able charge per day for the use of these barges and scows and equipment they had on them?

A. Well, about a hundred dollars a day at that time. At that time that is what I concluded to be a reasonable charge.

Q. As president and general manager of the Columbia Contract Company did you go down to the scene of the wreck and take any part in superintending the raising of it?

A. Well, I was down there several times and stayed for a day or so.

Q. I wish you would describe in a general way how the vessel lay in the river; the depth of the water she was in, if you know, and the damage that was done to her and how you raised her, etc.

A. Well, the vessel was sunk about seventy miles from Portland down the Columbia River, and the water was—the river there, I suppose, a mile wide. Though I never measured the water, I understood the vessel was sunk in some seventy to ninety feet of water.

Q. How did she lie in the river?

A. Crosswise of the river, at right angles with the current, and she laid over on her side with the mast pointing up the river. [479]

Q. Did she lie on the bottom; that is, imbedding herself in it or not?

A. I was told that she imbedded; I don't know.

Q. Well, if you were just told about it I will leave that out. How was the current of the river there?

A. Very swift; very rough when the wind blew.

(Testimony of Daniel Kern.)

Q. Will you state in a general way what damage was done to the "Kern" by the collision?

A. Well, this boat struck her about, I should judge, about fifteen feet of the stern, kind of quartering, and she cut her clear into the keel and broke her coupling on the shaft and bent the shaft.

Q. What did the collision—what effect did the collision have on the stern of the "Kern"?

A. Well, we had to take and rebuild her from the stern several feet forward; I don't know exactly how many feet.

Q. Can you describe the operation of raising her, how you accomplished it?

A. Well, we had a barge on each side with timbers across and timbers that were worked under jacks on the side; and we sunk those barges when the tide was low.

Q. How would you sink them?

A. Valves; valves in the barges let the water in and we pumped them out; when the tide commenced to raise we commenced pumping the barges out; lifted the boat that way as much as we could.

Q. Then what did you do after you had lifted her as much as you could?

A. We had a long line anchored over towards the shore and we pulled her out of this hole just as fast as she raised, [480] with these engines we had on these barges.

Q. Was that when the tide went out again?

A. We shortened up on the chains and took another lift on her.

(Testimony of Daniel Kern.)

Q. Then, as I understand you, you would lift her as much as you could when the tide came in, work her over towards the shallower water?

A. Carrying her ashore all the time until we got to where her deck was out of water.

Q. And when the tide fell and the barges lowered by the side of the "Kern" again, you took a new hold and took a new lift; is that it? A. Yes, sir.

Q. How did you get hold of the "Kern" to lift her?

A. In the first place got a wire under the transom; we raised the stern up and then we worked the wires forward until we got enough wires and chains under her to raise her.

Q. That is, the wire passed underneath her hull?

A. Yes, sir.

Q. Wires and chains. Who paid the wages of the men and the other expenses of raising?

A. The Columbia Contract Company.

Q. And who signed the checks?

A. I signed most of them, and the others—bills that I didn't sign were all O.K.'d by me and made up by the bookkeeper.

Q. And when it came to repairing her who signed the checks for that? A. I did.

Q. And what did you do in writing out these checks towards keeping a memorandum of what the checks were for?

A. They were endorsed on each check what they were issued for. [481] There wasn't any vouchers attached.

Q. I wish you would explain, Mr. Kern, the sys-

(Testimony of Daniel Kern.)

tem of bookkeeping that you used in the Columbia Contract Company with particular reference to the number of the voucher and check and the number of the bill that it is in payment of, etc.

A. Explain the system.

Q. What I want to ask about particularly is when you see a check with a number stamped on it, what does that number indicate?

A. That number indicates the number of the voucher, and that number is on the record book and we can always find that, refer to it.

Q. So that if a voucher or check bears a certain number you can turn to your record book and it is in there under there under that same number?

A. Yes, sir; the vouchers are all accounted for; have to account for all those vouchers.

Q. And what is done, if anything, in the way of numbering the bills that are sent to you for payment with a number corresponding to the number on the check? A. They are all stamped.

Q. With the same number?

A. Same number; duplicate numbers.

Q. I have noticed in going through these bills and checks and vouchers, and it will be evident when I put them in evidence, that in many instances the voucher check is not signed, but that you have signed a similar white check yourself and it is pinned to and attached to the voucher; why is that?

A. The way that happened is that our head office is at the quarry above Vancouver and this work was all done in Portland [482] here. Of course when

(Testimony of Daniel Kern.)

a man came up for his pay—we had an office in the Sherlock Building—of course when a man came for his pay we couldn't send him up to the quarry very well to get his money, so we issued those checks.

Q. The white checks?

A. The white checks, and they were sent to the quarry and attached to these vouchers and took their regular place in the record book.

Q. How were they sent to the quarry?

A. They were sent from the bank to the quarry.

Q. After these checks were cashed by the bank, the bank in making its monthly statement to the Columbia Contract Company would send them to the head office? A. Yes, sir.

Q. At the quarry, and they would there be filed with the corresponding voucher with the same number? A. Yes, sir.

Q. When a bill comes in to your office for anything that your company has purchased, what is done to inform the bookkeeper what account he is to charge it to? How does he know?

A. When I O. K. a bill I generally make a memorandum of what account to be charged to.

Q. Now, you say when you O. K. a bill; does every bill have to be O. K.'d?

A. Yes, every bill has to be O. K.'d by somebody who has knowledge of it, before it is paid.

Q. Are you the person who generally O. K.'s?

A. No; we have a superintendent at the quarry who O. K.'s a good many bills; we have a superintendent across the river; he O. K.'s a good many bills.

(Testimony of Daniel Kern.)

If the bookkeeper orders goods [483] himself, he O. K.'s the bill.

Q. The man who puts the O. K. on it has to know what it is for? A. Yes.

Q. Was there an account kept in your office known as the account of raising the "Kern," for example?

A. Yes, sir.

Q. And how about an account for repair work on the "Kern"?

A. We kept an account of repairs.

Q. So that in any of these bills—I show you a bill attached to voucher 24,454. This bill has on it, "Charge raising the 'Kern,'" and I want to know if that is an example of what you mean about charging these different bills to the account to which they belong? A. Yes, sir.

Mr. WOOD.—Now, I have tried in that general way to indicate about their system, etc. If you want to ask anything more about it, Mr. Reed, you are welcome to, but I am now ready to make an attempt to get together.

Mr. REED.—I will ask a couple of things about the facts and then we will do that.

Cross-examination.

Questions by Mr. REED:

Are the "Wallacut" and the "Kern" the same size?

A. No, I think the "Wallacut" is a smaller boat, differs in size.

Q. Were they used for the same purpose?

A. About the same purpose.

(Testimony of Daniel Kern.)

Q. Well, isn't it a fact that boats like these lay around frequently without any particular use, or were they in demand at all times?

A. Oh, there are times, of course, dull spells, but not very [484] often. That boat was busy at that time.

A. Was the "Kern" similar to the "Wallacut" in power? Was the "Kern" a bar tug?

A. I don't know what power the "Wallacut" had, but the "Kern" done the same work that the "Wallacut" done for us.

Q. For you? A. Yes.

Q. That is, taking the scows down from the quarry to the mouth of the river?

A. The "Wallacut" only came up about as far as Brookfield; we towed them as far as Brookfield with another boat and she took them from there down.

Q. Were you intending to have it understood that a boat like the "Kern" could pull in \$50.00 a day?

A. She should if she was employed.

Q. I beg pardon?

A. She should if she was employed; yes.

Q. I mean, would she be employed?

A. Well, she is employed most of the time. Of course I never tried to get any work on the outside for these boats, when we are in that rock business, for we keep them busy ourselves all the time.

Q. What did she cost?

A. What did she cost?

Q. Yes.

(Testimony of Daniel Kern.)

A. Well, I don't remember what she did cost. We bought her from the Government and put new boilers in her and rebuilt her and fixed her up.

Q. What was her name when you bought her?

A. "Manzanita."

Q. Was that the old "Manzanita"? Well, you can come awfully near [485] to stating what she was worth.

A. What she cost and what she is worth is two different things.

Q. What?

A. What a boat might cost and what she might be worth is two different things. I might buy a boat on the market *her* for ten thousand dollars and she might be worth fifty thousand.

Q. You don't know what you paid for her?

A. Yes, we know what we paid for her.

Q. Then you know what she was worth then, do you?

A. No, I don't know what she was worth.

Q. Well, would you know what a boat like the "Manzanita" would have cost at that time?

A. A boat like the "Manzanita" at that time would have cost—

Mr. WOOD.—You mean to build her?

A. (Continuing.) Cost about \$125,000.

Q. And you figure that—then do you figure that—

A. I don't figure it. You see I haven't been figuring at all.

Q. Well, the "Manzanita" at your estimate would have cost about \$125,000?

(Testimony of Daniel Kern.)

A. To build a boat of that size and capacity, I should think.

Q. And she was condemned by the Government before you bought her?

A. No, she wasn't condemned by the Government.

Q. Well, you bought her from the Government?

A. Yes, sir.

Q. You are sure she was not?

A. No, I don't know as she was condemned, but they put her up for sale and we bought her.

Q. You swear she wasn't condemned?

A. No; I won't swear she wasn't condemned. I don't know that [486] she was condemned, though. But this wasn't the same boat. We bought that boat from the Government; we rebuilt this boat and put new machinery and boilers in her and spent a lot of money on her.

Q. Now then, you may state what you paid for her.

A. What we paid for her at the time we bought her?

Q. Yes.

A. Well, I don't know exactly what they did pay for her; I think though about, somewhere around \$15,000; she had just been sunk and raised and we had to rebuild her and put her in shape.

COMMISSIONER.—Is that the same boat that was in collision with the port of Portland?

A. Yes; we bought her right after that.

Q. You bought her when she was in the water, under water?

(Testimony of Daniel Kern.)

A. Yes; what we paid for her had nothing to do with the value of that boat.

Q. I know it didn't; I want to get at something.

A. We had to put in new boilers in the boat and put in all kinds of new machinery.

Q. Well, at the rate of \$50.00 a day that is \$1500.00 a month, isn't it? A. Yes.

Q. And twelve months in the year would be \$18,000 a year; that is what you figure?

A. If she were employed every day she would be worth that much money. There is lots—there is boats now making three times every year what they cost, right now.

Q. That is the reason I asked what she was earning in 1909.

A. Well, it was a good demand for boats in 1909.

Q. Were these boats like the "Wallacut" and these other boats [487] cleaning up \$18,000?

A. I don't know what they were cleaning up. I know our own boats were busy. I don't know anything about the "Wallacut," what she was earning or anything about it.

Q. That is the question, however, your counsel asked you, what the boat could have earned; not whether you were busy or not. That is the reason I asked.

A. She was worth \$50.00 a day to us, because we paid \$50.00 a day to have that same work done, to other people, on more than one occasion.

Q. On occasions?

A. More than one occasion, I say.

(Testimony of Daniel Kern.)

Q. On occasions?

A. Yes, a stretch of two or three months at a time.

Q. I know, at different odd times.

A. When our own boats were not in running order, or something, we had to hire a boat. At the time I hired that "Traveler" we were putting new boilers in the "Sampson."

Q. In 1909, is it your intention to state to the Commissioner who is taking the testimony in this case that you paid \$50.00 a day, not to you but to an outside owner, each and every day?

A. Yes. If they wanted the boat that is what they would have to pay for it.

Q. I know, but was it wanted there any time?

A. I don't know what the market was for that boat at that time, that day.

Q. Only if they happened to charter it?

A. Yes, but we were paying that for that class of boat.

Q. When were using them?

A. Yes, when were using them. We had our own boats and didn't [488] have to hire a boat very often.

Q. How many boats did you have like the "Kern"?

A. We have four.

Q. And were they all occupied?

Mr. WOOD.—What do you mean, now or then?

Mr. REED.—Then; always then.

A. We had four, 1909, yes—no, we only had three in 1909.

(Testimony of Daniel Kern.)

Q. Were they all occupied in taking barges up and down the river?

A. Employed in our own work.

Q. I say, taking barges up and down?

A. Well, some of them were towing barges down to the mouth of the river.

Q. What?

A. We had one barge towing around Portland here, one boat. The rest of them were engaged in towing to the mouth of the river.

Q. What boat was engaged here in towing around?

A. A little boat called the "Triumph."

Q. Whose work did she do towing here

A. What is that?

Q. Whose work did she do on the Willamette, your own work? A. Why, yes.

Q. You didn't charter her or lease her?

A. No.

Q. In the work of raising the "Kern" who had charge of it? A. Mr. Knudsen.

Q. And were the men employed by him, the Columbia Contract Company's regular employees, or a special crew of wreckers and laborers?

A. Men that we picked up to do the work. [489]

Q. I meant, were they men whose special occupation is that sort of work?

A. Oh, there are no such men around this part of the country that make a specialty of raising boats.

Q. Under whose direct charge was the raising done? Whose charge? Who was the man that gave the orders, do this or do that—the policy?

(Testimony of Daniel Kern.)

A. Well, I told Mr. Knudsen to go down there and raise the boat and I suppose he gave the orders.

Q. Had he ever engaged in that sort of work before? A. I think so.

Mr. WOOD.—I will say for your information we will put Mr. Knudsen on and he will tell all about his experience.

A. I don't know what experience he had.

Redirect Examination.

Q. Just in that last connection, Mr. Kern, weren't Captain Crowe and Mr. Honeyman also down there during the raising?

A. Well, Captain Crowe was; I don't know about Mr. Honeyman being down there.

Q. And I don't know whether it is in the record. You might say who Captain Crowe was.

A. He was marine surveyor here at that time.

Q. What was he doing down there at the wreck?

A. He was down there to see about raising the boat. To see whether we were carrying it on right.

Mr. WOOD.—That is all, unless we are going to take up the bills. Of course, if you want him to identify each bill we will have to keep him here for a couple of days. You see he has signed every one of these checks.

Mr. REED.—I move that the testimony of the witness in [490] regard to the *per diem* value of the "Kern" be stricken out on the ground that it is incompetent, irrelevant and immaterial as testimony on which to found a claim for damages.

COMMISSIONER.—Your objection will be noted

(Testimony of Daniel Kern.)

in the record and same can be raised on objection to the report, so there is no use to pass upon it.

Witness excused. [491]

Testimony of Theodore Knudsen, for Libelant.

THEODORE KNUDSEN, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Will you state at length your experience as a wrecker and repairer of vessels?

A. Well, I have been at it thirty-three or four years, building and wrecking. I was on the Great Lakes for over thirty years. I raised the "Philip D. Armour" in the Detroit River and I raised the "Iron Cliff" on Hyde Park reef outside of Chicago. I raised two boats, the "Marlowe" and the "Gordon" in Lake Michigan; the "Marlowe" and the "Gordon" is the names of the two boats, and then I was assistant wrecker on a good many other boats on the Soo and on Lake Erie and the St. Clair River, a number of jobs. And on the building I done quite a little of that, built quite a few boats. Worked at it all my life.

Q. Where?

A. On the Great Lakes, worked for the American Ship Building Company eight or nine years; then I worked for Manitoulin Drydock Company. I was superintendent for them and associated with them, interested with them. Then I went to Chicago for

(Testimony of Theodore Knudsen.)

about six years and on the coast there I superintended the building of the "Chinook."

Q. That is on this coast? A. Yes, sir.

Q. The dredge "Chinook" down at the mouth of the river, United States Government dredge?

A. Yes, when they cut her down; cut one deck off her. And a number of jobs I worked for Mr. Kern of the Columbia Contract [492] Company, for practically a year, doing boat work all the time, and I done some wrecking on the coast too.

Q. What was it?

A. The "Oshkosh"; she was out in the breakers upside down. I took the machinery out of her.

Q. Out in the breakers off the Columbia?

A. Yes; right in the breakers eighteen hundred feet from shore. And I done a lot of small matters; wrecked a barge down in the Siuslaw and raised the "Daniel Kern" on the Columbia River.

Q. At the time she was sunk in collision with the "Elder"? A. Yes, sir.

Q. What are you doing now?

A. I am now working for the Peninsula Shipbuilding Company.

Q. What capacity?

A. Superintendent for them; superintendent, that is my title, I guess.

Q. Coming more specifically now to this "Daniel Kern" which you raised down near Waterford, how did she lie in the river?

A. Well, I don't know exactly what course she was lying, but she was lying—her bow was lying towards

(Testimony of Theodore Knudsen.)

the Washington shore, pretty near directly across the channel; just about diagonally the channel or square across, I mean, of the channel.

Q. About how deep was the water she was in?

A. Well, I measured from the bottom of the keel, high water I judged it about ninety feet, but I think from—she was in a hole, you understand, but right from there was probably about sixty-five feet, something like that; that is, the bottom surrounding her.

Q. What do you mean by hole there? [493]

A. Appeared to be a hole where she was setting, just kind of on the bottom.

Q. Do you mean she made that hole herself?

A. I don't know whether she made it herself or not. Of course she might have made some of it. Apparently there was a trench through the river, because was a deep hole ahead of her and also astern of her.

Q. What current was there in the river?

A. Well, at one time there was an awful current. Four men couldn't pull against it with four oars. We had to pull out along the shore and then shoot across to get on to it. Had nine anchors out, and by gosh, couldn't hardly hold the barges.

Q. Now, you mentioned the barges, and that brings us to the point of describing the method you adopted to raise her. Will you tell about that?

A. Well, when we first went down we had a small barge with us; had two big ones and one of the big ones was laying at Stella; we couldn't hold her in with one of them, so took one of the big barges and a

(Testimony of Theodore Knudsen.)

little one down with us. So we anchored the big one upstream a ways from the wreck and slacked a little down, and got a cable slipped along her stern and held her there, held the cable there until we got two barges placed, one on each side. Got that down and fastened the cable on the big barges and sunk them down.

Q. How?

A. We had gates in the side of them, close to the water and inside, you know. We put holes through the side, you see.

Q. Side of the barges?

A. Yes, and put slides on which worked in rubber gaskets, [494] and raised them up and down; when we wanted to sink, we would leave them up and the water would run in the hold; if we wanted to raise her, shut the gates down and let the water out.

Q. Was a big valve?

A. Yes, I presume about a foot square, the hole was, because it takes quite a time to sink the big barges; takes quite a bunch of water. Of course when we got them sunk down a way, were pretty taut; had donkeys and boilers. We also had big pumps aboard, and of course at low tide we made them fast, you understand, to the barges, and set our pumps to work, and of course the tide, as well as lifting by the buoyancy of the barges, lifted the astern off the bottom, and of course we could sweep in more cables.

Q. Then as you raised the "Kern," you would slip in more cables under the keel.

(Testimony of Theodore Knudsen.)

A. Yes, and the more we got in the more to took the strain on them, kept even strain on them as far as we could until we got all under.

Q. How many did you get under her?

A. I think we had eleven at one time.

Q. How were those cables fastened to the barges?

A. We had fastened to the barges different ways. We put chains under her. Of course, the cables would strip often by boats coming by. The "Hassalo" and the "Harvest Queen" came by and made quite a surf and we couldn't keep down and would slip the cables. Sometimes more strain on one than another and of course the one with the most strain would snap, and one snap would cause another; so we put chains on them. Of course there is some give to a chain where none at all to a cable, and we had to put chains under the same way. [495]

Q. But you haven't yet told, I think, how these cables and chains were fastened to the barges?

A. In the first place, we had a barge along on each side like that and of course I figured out where the house of the ship was.

Q. The ship was all under water?

A. On the bottom; then I went to the Benson Logging Company and got some long logs; 120 feet was the shortest we had; from 120 feet up; and placed them across the barges before and aft the house and lashed them down to the barges. That kept the barges from tipping in; then got some square timbers and cut a hole through them.

Q. Through the timbers?

(Testimony of Theodore Knudsen.)

A. Through the timbers, yes, to place the chains through, you see. We had two timbers, one below and one above, then we had square irons bent on like a horseshoe, and we had two of them for each chain. You see the chains coming up through here through the bottom timber and to the top timber. You see we had a jack between the two timbers. You understand; and sometimes had to put cross timbers and jacks on it so as to lift the barges. We could put four jacks in there, but that was not enough; sometimes had to put eight in and put another timber in there; we go through the next timber; for instance, we put that stern higher, put it in across on top; that held that chain, and we put the screw on if we want to fleet; then when the screws were all out we had a chance to shorten up again, get a new hold; then we put our hand down below and we held the chains so they couldn't slacken off until we got the timbers down and got a new hold on top and went ahead again. [496]

Q. Then these two big square timbers, you mean, operate sort of like a hinge at one end. You would raise the upper timber and lift in that way with jack-screws?

A. That's the idea. We went to work and had them, these long timbers, this way across the barge, and the other end was lashed down there together.

Q. The other ends of the two timbers then were lashed together on the side of the barge opposite the wreck?

A. Yes, sir; on the outboard side and lashed to the

(Testimony of Theodore Knudsen.)

barge so as to allow the top timber to work up and down in that fashion. We had four timbers for each chain, two for each side, making four. I think the hoisting we had nine chains, if I am not mistaken.

Q. And as you raised the timber up with jack-screws as high as you could, then you would slip something under the top timber, or between the two timbers and take a new hold on the jack-screw?

A. That's the idea exactly. That piece of iron I spoke of we had bent, not iron, was tool steel so it would not sweat, good and hard. We had that and slipped over the chains.

Q. It was the same principle as when you pry anything up with a lever and after you lift so high you put a block under to hold it and take a new hold with the lever?

A. Practically the idea, yes; practically the idea all the way through.

Q. I show you a photograph, Mr. Knudsen, and ask you to state what it is?

A. That shows it, right there it is. You can see the levers on top. [497]

Q. Is that the "Kern" and barges?

A. Yes, that is the "Kern."

Q. After she was lifted out of the water?

A. Well, she was up then, you know, ready to go in drydock at that time. There is the timbers I mentioned, you know, that go across. Them long logs there are timbers, going across.

Q. Those long logs are the ones you put there to keep the barges from tipping towards the wreck as

(Testimony of Theodore Knudsen.)
she lifted? A. Yes, sir.

Q. You were afraid the weight of the wreck without those logs might tip the barge in?

A. It would tip. You see the buoyancy was weak; they are tender; they go over easy.

Q. And the square timbers with the big chain around them are the ones you have been describing?

A. Yes, sir.

Mr. WOOD.—I offer the picture in evidence.

Marked Damage Exhibit "A."

Q. As you raised the "Kern" on the incoming tide, what did you do towards moving her ashore?

A. Well, after we got out of the hole—that took quite a while, we had—we kept on jacking, you know, would screw down on the jack-screws there, well, for pretty near a week I think before we got out of the hole, and after we got out of that deep hole of course she floated in. The water got shallower as we got towards shore. We picked up as high as we could and floated as high as we could and of course rested on the bottom and we stopped. [498]

Q. Then when the tide went out you would take a new hold? A. Just the same method.

Q. The barges would sink with the outgoing tide?

A. Just the same method all the way through.

Q. Did you have any trouble, Mr. Knudsen, about the timbers breaking there at first?

A. The big round timbers, yes, that held the barges together. I had to go and get more and reinforce them.

(Testimony of Theodore Knudsen.)

Q. What made them break, the extreme weight of the tug?

A. The heft of the boats made them break.

Q. What did the "Kern" have in her, if anything, to increase her ordinary normal weight?

A. She had a bunch of rock and dirt, you know, gathered from the bottom.

Q. What was the rock? How did the rock get there?

A. Well, they use the rock, you know, to keep the wheel in the water.

Q. In other words, it was ballast?

A. Ballast, yes.

Q. This dirt you speak of, how did that get in?

A. Her hatches being open and the doors out of the house floated in at the bottom.

Q. Silt from the river washed in?

A. Yes, always does that in all wrecks.

Q. Did that increase the difficulties of raising her?

A. Made her heavier.

Q. Did you work on every incoming tide?

A. I worked on the incoming and outgoing, both.

Q. What I mean particularly is, did you have to have your crew on hand to avail yourself and take advantage of every tide? [499]

A. Yes, sir; I had to have practically speaking, two crews; had to have an engineer's crew when the tide came in and the other crew when the tide went out, operating the pumps and boilers, etc.

Q. Is that what you meant by engineer's crew?

A. Yes, sir.

(Testimony of Theodore Knudsen.)

Q. Why did you have to have the other crew particularly?

A. Have to handle the chains and do the stowing up of timbers.

Q. You spoke of cutting these holes in the barges to make the water-gates, flood-gates, whatever you call them. Did you have to cut any holes through the main timbers used across the barges?

A. Yes, I just told you had to cut holes to lash them down to the keelson. Didn't I explain that?

Q. I don't think you have.

A. Let me see the picture and I can explain it better. If you notice close you can see some lashings coming around there in the barges; for instance, one lashing there and one lashing might be changed. The chain takes it up. You can see a little. That lashing goes right down through her deck and through her shaft strakes and comes down and gets hold of her keelson down below and of course we had to cut them holes.

Q. And you had to cut holes through the decks?

A. Yes, through the decks.

Q. In order to lash these timbers to her keelson?

A. And keep from sliding had to go on the keelson.

Q. What was the necessity of lashing to the keelson?

A. What good would it be if you didn't lash them. Might tear the whole deck and all out.

Q. It was a necessary thing to do. [500]

A. Absolutely. On the other side of these long timbers cut holes through the deck to lash the timbers down.

(Testimony of Theodore Knudsen.)

Q. In the same way?

A. Don't go through keelson there, because the levers were short. It was not necessary. We just went through the beams there, around the beams, rather; not through the beams, but through the deck and around the beams.

Q. I show you another photograph and ask you if that represents the "Kern" lifted between the two barges?

A. Yes, sir; that is her. Her name is on there, too; you can't miss it.

Q. Barge 17 is on there, too, I believe?

A. Yes, there is the tug "Wentworth," the barge and the "Kern" and the whole thing. The little barge, I think, is there too. I think the whole thing is there. I think that is the little barge.

Q. The littel barge is in the lower left-hand corner; just the corner of the barge showing?

A. That is all; and there is one of her boats. There is the "Wentworth"; there is the "Wash-tucna."

Q. The "Wentworth" is on the left?

A. Part of the house; we had her for a tender.

Photograph offered in evidence and marked Damage Exhibit "B."

Mr. REED.—You don't know who took them?

Mr. WOOD.—Yes, a man by the name of Spaulding.

Q. What is that photograph?

A. That is the same thing. You can see the lash-ing plain there.

(Testimony of Theodore Knudsen.)

Photograph offered in evidence and marked Damage Exhibit "C." [501]

Q. Mr. Knudsen, you have mentioned the "Wentworth"; what was she there for?

A. Well, she was there to help us place anchors, move anchors, give us a pull if any was required, to get supplies and fuel for us.

Q. Did you use her to pull you towards shore after you got floated? A. Yes, sir.

Q. What was the "Wentworth"? Describe what kind of a boat she was.

A. Well, she is used for towing logs on the river; she is a stern wheeler.

Q. Is she one of these ordinary Willamette-Columbia stern wheel river boats?

A. That is what she is, yes.

Q. Could you have done the work there, Mr. Knudsen, without the "Wentworth" or some boat like her?

A. No, had to have a tug of some kind and sometimes had two tugs there.

Q. What was the other tug?

A. The other one was the "Sampson." We struck her occasionally and she gave us a pull.

Q. The "Sampson"?

A. She was towing rock barges up and down and whenever we needed a pull we stopped her to give us a pull.

Q. I show you Damage Exhibit "B." That one you mentioned having "Daniel Kern" visible written on the stern. In that photograph the stern appears to be twisted and dropped down. I now ask you whether

(Testimony of Theodore Knudsen.)

or not that was a fact; whether the stern was dropped down?

A. Yes; that shows right in there; yes, it shows plain. The [502] cable goes right on her stern with tackle to her main mast. Her stern now was just about ready to fall off altogether, when I got it where I could see it, and I didn't want to lose—well, several things; the shaft, for instance, and several things, and also I didn't know but the stern post might be included in that loose part, so I got a cable and put it around it and put to the main mast and stayed to main mast, foremast, and down to the stem. Took it to a winch and made it taut, made it hang there.

Q. You mean by that slipping a cable underneath the stern; the vessel was so cut in two there was danger of losing the stern?

A. That was my view of it; it might have hung on, but I thought better to do it. I took precautions so wouldn't lose it.

Q. Can you describe in a general way the damage that was done to the "Kern"?

A. Yes; she was cut in practically—she was cut clear to her keelson, or to her keel, would be the same thing, you know, only one is above the other.

Q. On which side?

A. Starboard side; just about abreast of her truss bearing. Truss bearing is between the intermediate shaft and—first comes the crank shaft, then the intermediate shaft, then the truss shaft, then the tail shaft.

(Testimony of Theodore Knudsen.)

Q. That in effect would be on her starboard quarter, wouldn't it?

A. Be a little forward of her quarter; just about the beginning of the quarter.

Q. Being cut in two like that, what damage was done to her machinery? [503]

A. Everything in front of it was carried away. I forget—some beams on that side carried away and broke and, if I am not mistaken, a coupling was broke and the tail shaft sprung; that was sprung bad. We had an awful time getting it straight.

Q. In this photograph A, her house and deck and bulwarks, bitts and everything seems to be destroyed there?

A. Yes; they was all carried away; we had to go to work and tear the planking off the outside and the ceiling inside quite a ways forward; tear the coal bunkers out so we could get a chance to splice in.

Q. You are now talking of the repairs?

A. Yes, sir.

Q. How many days if you remember, and if you don't, say so, were you engaged in raising her, do you know?

A. Well, no, I don't remember exactly; I couldn't tell you for sure.

Q. Have you any record you could look up and find that out?

A. No, I turned all the records over to Mr. Kern. I think it was something like six weeks, if I ain't mistaken. Practically speaking, six weeks; might have been seven.

(Testimony of Theodore Knudsen.)

Q. Well, we will have to get some record of that that will probably be better than your memory. Were you in charge of the repairs afterwards?

A. I was, sir; yes, sir.

Q. You might state, after you got the vessel raised where you took her for repairs and how you got her there.

A. Well, we—I forget just now; I don't remember exactly what day it was, what day of the week, I mean; but when we left her mooring and went as far as Stella I got off the boat and took [504] a small boat and went into Stella. We passed Stella. I called up Mr. Kern, where shall I land her? He says, "Land at Willamette Iron Works." So the following day we got to Willamette Iron Works; took us all that day, the next day and part of the next day.

Q. Before you get too far away, how did you get her from the river to the Willamette Iron Works?

A. The "Wentworth" hauled us up.

Q. Hauling her between two barges?

A. Yes; that photograph shows at Willamette Iron Works.

Q. The "Wentworth" towed you to the Willamette Iron Works? Then what did you do?

A. Had to wait a few days before we could drydock. I think the drydock was occupied, if I ain't mistaken; then we had to—we kept the pumps going meantime night and day all the time. Then we slacked away her chains, had a tug stand by, and pulled out the cradle, as I call it you know, and shoved her into drydock.

(Testimony of Theodore Knudsen.)

Q. Which drydock did you put her on, the Oregon drydock? A. Oregon drydock, yes, sir.

Q. Down near the Willamette Iron & Steel Works?

A. Yes.

Q. And I believe you said then that you had general superintendence of the repairs afterwards?

A. Yes, sir.

Q. Before towing her up from Waterford did you have to bulkhead her?

A. Oh, yes; we had to bulkhead her before we could get the water out of her hold; before we could hold it.

Q. Where did you put the bulkhead? [505]

A. We put the bulkhead right forward of the cut.

Q. And then you pumped the water out forward of the bulkhead?

A. Yes; and the after part was always full. Of course, we had to get the rocks out of her; they had a diver there, you know.

Q. Get the rock ballast out of her? A. Yes, sir.

Q. And also this dirt and silt that you speak of?

A. Well, we didn't get all that out; we just got the rock out of her enough to get the bulkhead down and taking out, working forward; she was full all the way aft; also used diver to get canvas on; had to nail canvas on to keep the water out. The bulkhead we couldn't get tight, you know, down below.

Q. I don't know as I asked you this. Where was she sunk? How far was it from shore, do you know?

A. Well, I never measured it; I couldn't say for sure, but she was right straight in the channel; I re-

(Testimony of Theodore Knudsen.)

member that. The channel there is probably about three hundred feet.

Q. You said across the channel; you don't mean straight up and down the channel; you mean directly in the channel?

A. In the channel, I mean; right across the channel. I don't know, I couldn't say—

Q. Now, returning to the repairs that you superintended, can you describe in a general way what they were, what they had to do for her?

A. Yes, I guess I can.

Q. I wish you would.

A. The first thing we had to do was to clear away all the rubbish, such as rocks and all the sediment in the bottom [506] of her; tear away all the broken wood and practically loosen her up. She had a twist in her, you know, about a foot and a half; her stern was leaning to port and her stem was starboard. Of course the stem might have been plumb, but nevertheless her stern was laying over a foot and a half, and I had to put hydraulic jacks on to her so as to get her back into line again. Well, we had to loosen up the fastenings quite a ways forward.

Q. So you could straighten her?

A. Yes; and of course after the fastenings was loosened up she would come out and we would refasten again. Then we had to break butts on the planking in the ceiling, and clamps and shelves and the whole thing, decks, and go forward far enough to allow a proper hold to the old, you know.

Q. What sort of wood was she made of?

(Testimony of Theodore Knudsen.)

A. She was built out of oak, white oak.

Q. And in repairing her did you use oak in every instance?

A. No, we didn't; we used oak frames and we used fir for her ceiling and her planking.

Q. Is fir as good as oak in building a vessel?

A. No, it isn't considered as good as oak.

Q. Why didn't you repair her with oak?

A. We couldn't get timber long enough to make proper connections.

Q. What would be the comparison between the cost of white oak and fir?

A. Well, Eastern white oak at that time, I presume was worth about \$120.00 or \$125.00 a thousand, and fir probably worth about \$20.00 or \$25.00.

Q. So if you had insisted on repairing her with the same material that she had been built of, it would have cost you \$125.00 a [507] thousand as against \$20.00 a thousand?

A. Yes; practically speaking. Say, \$25.00; that is allowing fair.

Q. You spoke of loosening her up forward to straighten her, and breaking butts, I think you said, of the ceiling and sides. Were you able to use the starboard quarter and patch it up again or did you rebuild the stern?

A. No, we had to rebuild the whole thing. Had to rebuild the port quarter, you mean?

Q. No, the starboard quarter.

A. Oh, that was all gone; all smashed up.

Q. And the port quarter you entirely rebuilt; then

(Testimony of Theodore Knudsen.)

you rebuilt the whole stern of the vessel, did you?

A. Yes; built new starboard quarter and rebuilt the port quarter.

Q. Do you know about the damage to the machinery and what was done to repair it, or does Mr. Honeyman know that only?

A. Well, I had quite a little to do with repairing the hull and I didn't pay very much attention to the machinery with the exception of getting the old shaft out and replacing with new one.

Q. Well, I will show that by Mr. Honeyman in addition, but tell as much as you do know about the damage to the machinery and the repairs made to it.

A. Well, of course, all the piping, you know, around there was busted and broken. I think one pump was all gone, smashed all to pieces, and of course in bending the stanchion her main engines was twisted on the foundation and had to be lined up again. As a matter of fact, the whole thing had to be overhauled all the way through her, all the piping. Her covering of the piping was all gone all over.

Q. You mean the asbestos covering? [508]

A. Yes; also on her boilers; they were gone. The asbestos, you know, on it. You see in getting around her we had to handle some of that stuff kind of—you couldn't work with kid gloves, you know.

Q. Was there any silt or mud in the machinery that had to be cleaned out?

A. Oh, yes, everything that mud could get into.

Q. It was there? A. Oh, yes, it was there.

(Testimony of Theodore Knudsen.)

Q. I believe the "Kern" before she was wrecked had a cabin on her? A. Yes, sir.

Q. Was that replaced?

A. Well, you know the after part was not replaced. We just repaired the part we could fix up and the other part we left out.

Q. Mr. Knudsen, did you know the "Kern" before she was wrecked? A. Yes, sir; I did.

Q. I show you a photograph and ask you if that middle boat there is the "Kern"?

A. I can pick her out for you. Yes, sir, that is the "Daniel Kern."

Q. I notice in that photograph she has a cabin down all the way aft?

A. Yes, and has a house on top there, too; and that main mast there was torn out, you know, during the wreck there, which was not missing before. The main mast was carried away altogether and her fore-mast was a piece broke off.

Photograph offered in evidence and marked Damage Exhibit "D."

Mr. REED.—Is that photograph intended to convey the appearance of the "Kern" at the time of this accident?

Mr. WOOD.—Before the accident. [509]

Mr. REED.—I mean before.

Mr. CAMPBELL.—Here is one introduced in evidence on the original hearing. You can see the identification, Libelant's Exhibit 1 in the first hearing.

Q. I show you Libelant's Exhibit 1, Mr. Knudsen,

(Testimony of Theodore Knudsen.)

and ask you to indicate how much of that cabin was replaced when you repaired the boat?

A. Well, there wasn't—how much was lost, you mean?

Q. All right. How much was not replaced?

A. Well, now, she was cut off, I think, about here, about like that; about by the main mast. From there on after it was gone and I left it off; never put it on any more. The rest of the parts were fixed up, you know, repaired it. Put on new bulkheads where we could and repaired the old ones, etc. New windows, of course, all over.

Cross-examination.

Questions by Mr. REED:

The repairs in the way of woodwork consisted of replacing the starboard quarter and the use of the port quarter, repairing the port quarter?

A. Yes; we used the port quarter all we could, you know.

Q. And had to replace the starboard quarter from the main mast aft?

A. Yes, we had to go to break the butts, splice in.

Q. What took out that main mast?

A. I think the heft; the current was so strong when we were laying right above her that the barges strike against her.

Q. Taken out when she was on the bottom?

A. It was done in the raising of her.

Q. Now, you mentioned something about the shaft.

[510]

A. Yes, her tail shaft.

(Testimony of Theodore Knudsen.)

Q. What happened to it?

A. When we took it out it was awful crooked; awful time getting it out.

Q. Is that so? A. Bent, yes.

Q. Was there an incision in the boat, in the "Kern"? She was hit in the starboard quarter there, wasn't she? A. Yes.

Q. And the bow of the "Elder" must have struck then, or bent some way the shaft?

A. Well, she hit just about by the truss shaft, and if I ain't mistaken, the coupling was broke. You see, two couplings from between the truss shaft and the intermediate and one between the tail shaft. I don't know whether hit there, but might have. She broke the coupling and just shoved over. Something might have got between the "Elder" and the shaft and shoved it plumb over, and we had quite a time getting it out.

Q. Do you know how old the engines were?

A. No.

Q. Do you know how long the "Manzanita" had been in commission?

A. Not to be sure; approximately I do, but not to be sure.

Q. What was it, approximately?

A. About thirty years, I presume; twenty-six years.

Q. You don't know whether the engines have been renewed in the "Kern" or not, then. She was in the water some time before that, wasn't she? You don't know whether the same engines or not?

(Testimony of Theodore Knudsen.)

A. You mean renewed before the collision or after the collision, which? [511]

Q. Before this collision; before she got into trouble with the port of Portland dredge.

A. I don't know anything about that; I couldn't tell you; I don't know. I know she had new boilers, but the engines I don't know a thing about.

Q. How many boilers? A. Well, boiler.

Q. Just one?

A. Well, I think she had a donkey boiler; I don't know for sure whether she did or not. I couldn't say for sure, but I think she did.

Q. Did you use one crew when the tide went in and one when it went out, on the work? A. Yes, sir.

Q. I don't understand that.

A. Well, what do you mean you don't understand?

Q. I don't see why you used two crews.

A. You wouldn't expect a man to work twenty-four hours a day.

Q. Oh, different shifts, was it? Just different shifts? A. Yes.

Q. Wasn't anything to do with the particularity of the work? A. Yes, it was.

Q. Please explain again. I don't understand the matter definitely.

A. For instance, when pumping we had men that understood pumps and understood firing the boilers, etc. We couldn't put in common laborers on that class of job. It requires quite a few laborers for this, getting wood for it, and seeing the chains were all proper, taut, equal chains on them; see the anchors

(Testimony of Theodore Knudsen.)

were out proper, and that was one shift.

Q. That was the engineer's shift? [512]

A. Yes, the next shift was the crew that changed the chains; that is, fleet them, they call it.

Q. Now, then, can you estimate how much in the way of board measure you put in in place of oak?

A. Absolutely no, I could not.

Q. Really didn't amount to much, did it, anyway?

A. Was quite a bunch.

Q. How much?

A. I couldn't tell offhand. It is impossible to tell you; it is impossible; I don't remember; a long time ago.

Q. How long was it?

A. I don't know how long. I guess about 160-165, something like that.

Q. Then there was a matter—how far would it be from the main mast aft?

A. Have to go further than the main mast, you know.

Q. Not far, though?

A. Yes, have to go forward abreast of the boiler. I went forward with some of them as far as her fore hatch.

Q. Was more than the quarter you worked on?

A. Sure; the underwriters compel us to go to get proper butts.

Q. I was getting information. I know that you put in new starboard quarter, but if you went clear up as near forward as that it would make a little more.

(Testimony of Theodore Knudsen.)

A. Would have to go forward; couldn't butt her square; that wouldn't be policy; have to seesaw fore and back.

Q. You don't know how much it was?

A. How many feet of lumber?

Q. Yes. [513]

A. No, I couldn't tell; I guess the record would show that. I couldn't tell you offhand; no.

Q. At that time were you in the regular employ of the Columbia Contract Company? A. Yes, sir.

Q. And as I understand it, they put you down there at this particular time to do this work under their own—without contracting it; they just did it through you? A. Yes, sir.

Q. There were no bids taken or effort made to contract it?

A. No, sir; not that I know of. Of course, that is something I don't know a thing about. I got my orders to proceed and raise it, which I did.

Q. Before that where had you been employed?

A. I was at Astoria at the time of the accident.

Q. For them? A. Yes, sir.

Redirect Examination.

Q. Mr. Knudsen, you said just now you were in the regular employ of the Columbia Contract Company. I don't know whether you mean you were regularly employed by them for this job or whether you were one of their regular employees year in and year out?

A. Well, sir, I went to work for Mr. Kern in March of the same year. I rebuilt a boat they called the

(Testimony of Theodore Knudsen.)

“Minnie Kelton,” No. 17, I think it was. She was a wreck; put a new stern in her, part of a new bow, and previous to that I had put a new boiler in that same boat, the “Daniel Kern”; and after I got through with the “Daniel Kern” he had another boat he wanted repaired. I was called on her and we done that job and she was in Astoria at the time of the collision between the “Daniel Kern” and the “Elder.”

Q. When you speak of being in the regular employ you mean you [514] were hired to do different repair jobs on different vessels of theirs? But, as I understand it you were not one of their regular, long time employees?

A. No, no, from time to time.

Recross-examination.

Q. When was the boiler put in the “Kern”?

A. Well, I went to work there in March; were put in that spring, probably in April or the first of May, I ain’t quite positive; something similar to that. Quite a little overhauling she had besides that. Had to tear her house off to get them in.

Q. What other repairs were done at that time?

A. Just general repairs, you know.

Q. What?

A. Well, I couldn’t mention right now what it was; for instance, had to take part of her house out to get the boilers in, and had to put a new house again on that part we took out.

Q. Were they working the engines then?

(Testimony of Theodore Knudsen.)

A. Oh, working them every year.

Q. At that time?

A. Oh, yes, the engineers was all there right along.

Q. I now ask you if the photographs here showing the destruction of the house here where your pilings crossed to keep the scows from tipping, was that done by the collision or removed to let the piles on?

A. No, that was done in the collision, sir, because you can see there we are about three feet, now, from the house; we never got high enough for that. From there aft, you know, it was just a roof, you understand, upper deck like that, stanchions all around.

Witness excused. [515]

Testimony of Daniel Kern, for Libelant (Recalled).

DANIEL KERN, recalled on behalf of libelant.

Direct Examination.

Questions by Mr. WOOD:

Mr. Kern, I hand you a voucher of the Columbia Contract Company, No. 24,454, and ask you to state if that is a voucher check of your company?

A. Yes, sir.

Q. And what is the bill attached to it?

A. The bill is for material used in the raising of the steamer "Kern."

Mr. WOOD.—I offer it in evidence and will ask a question or two about it later.

Mr. REED.—I object to it as incompetent, irrelevant and immaterial, not appearing on its face as having to do with the "Kern" and in fact appearing on its face as shipped to the quarry and not anything

(Testimony of Daniel Kern.)

to do with the "Kern," the "Kern" having been testified to as brought from the Columbia River to the Willamette Iron & Steel Company's Oregon dry-dock.

Mr. CAMPBELL.—That has to do with the raising of the "Kern."

Mr. REED.—Just the same I object to it because that went to the quarry and didn't go down there and it can be explained.

A. I can explain why it went to the quarry, 24,454.

Q. Mr. Kern, this voucher No. 24,454, is the regular voucher number that you use in your system that you explained before? A. Yes, sir.

Q. Is that your signature on the check?

A. Yes, sir.

Q. And is that voucher in payment of that bill?

A. Yes, sir.

Q. Which is attached to it? A. Yes, sir. [516]

Q. Now, you said you would explain why it went to the quarry.

A. Was shipped to the quarry and taken by our boats from the quarry down to this wreck, where they were raising this boat. We sent lots of freight down that way and wasn't no charge made for it.

Offered in evidence and marked Damage Exhibit 24,454.

Q. I show, Mr. Kern, Columbia Contract voucher No. 24,640 and with it a check bearing the same number, and will ask you to state whether that is your signature to the check? A. Yes, sir.

Q. And what the check is for.

(Testimony of Daniel Kern.)

A. Check is for labor.

Q. In connection with what?

A. Raising the steamer "Kern," \$48.00.

Offered in evidence and marked Damage Exhibit 24,640.

Q. I show you Columbia Contract voucher 24,648 with accompanying check bearing the same number.

Mr. REED.—Just a second. What was that first one?

A. This check is for labor.

Mr. REED.—What are these items?

Mr. WOOD.—These are in numerical order.

Q. I ask you whether that is your signature to the check and what that check is for?

A. That is my signature and the check is for labor, raising the steamer "Kern."

Offered in evidence and marked Damage Exhibit 24,648.

Mr. REED.—Can I cross-examine as they go in?

[517]

COMMISSIONER.—I think that is the orderly way to do. If you have any question about it, I think you should find out right then and there.

Mr. REED.—Did you make the annotation on the check as the check was drawn?

A. There when drawn, yes, on all of them.

Q. I show you a voucher, No. 24,654 with accompanying check bearing the same number, and ask you if that is your signature on that check?

A. Yes, sir.

Q. What was that check for?

(Testimony of Daniel Kern.)

A. Labor for raising the steamer "Kern."

Q. Was the check paid? A. Paid, yes.

Mr. REED.—In stating that it is on the "Kern" do you know of your own knowledge?

A. Well, I wouldn't pay it if it wasn't. I wouldn't have wrote that on there if it wasn't so. I made that check.

Mr. CAMPBELL.—You knew at that time?

A. I knew at that time that was correct. I don't know who Tom Dahl is now.

Q. I will ask you a general question covering all these checks. Mr. Kern, every one of these checks signed by you having memorandum on it like, "Raising Steamer 'Kern,'" or "Repair Steamer 'Kern,'" that memorandum was put on there by you at the time you wrote out the check, was it? A. Yes, sir.

Q. And it was put on there because, as president and general manager of this company, you had knowledge that was what the check was for?

A. Yes, every one of our checks shows what it was issued for. [518]

Q. So that although now you cannot remember any particular check, you can swear to it that at that time you knew that check was for that purpose?

A. Yes, sir.

Q. In other words, a record of past recollection?

Mr. REED.—How do you know that at the time you wrote this on there that this man Dahl was working on there?

A. Well, he had some evidence showing that he was working there.

(Testimony of Daniel Kern.)

Mr. REED.—What?

A. He had some evidence to show that he was working there.

Mr. REED.—You don't know what the evidence was?

A. Time check covering the time, they kept the time; Mr. Knudsen kept the time on the drydock, and Captain Copeland kept it on raising the boat.

Mr. REED.—The entry that was made here was made by you after checking with the payroll or time-book?

A. We always check up to figure up the time, to see it was figured out correct, and if correct we issue bank checks.

Q. In other words, these checks are all written up by you when time check is presented to you?

A. Numbered by me.

Offered in evidence and marked Damage Exhibit 24,654.

Q. I show you a voucher No. 24,657 with accompanying check, bearing the same number, and ask you if that is your signature? A. Yes, sir.

Q. And what was the check for?

A. Labor lifting—raising the "Kern"?

Q. Was the check paid? A. Yes, sir.

Offered in evidence and marked Damage Exhibit 24,657. [519]

Mr. REED.—Why don't you take all the labor and time checks up and offer them in a bunch?

Mr. WOOD.—I thought you wanted it done this way. I would be tickled to death to do it that way.

(Testimony of Daniel Kern.)

Mr. REED.—Witness can testify of his own knowledge to the amount.

Q. Mr. Kern, I show you voucher 24,659 with accompanying check and ask you first if that is your signature to the check and whether the check was paid? A. Yes, sir.

Q. Now, I call your attention to a memorandum in the left-hand corner of the check which is "Steamer 'Kern' wreck, \$30.00; watchman and deck," the check itself being for \$75.50, and ask you what your memorandum there means.

A. That watchman there at the dock; that means that there was \$30.00 that was paid to him; that was for labor while raising the boat and the balance was as watchman on the deck, it says.

Q. Do you mean there that you don't claim the total check as part of this collision damage or not?

A. No; that is all collision damage. That is watchman and deck-hand. We only claim \$30.00 for wrecking steamer "Kern." He was watchman and deck hand on the boat.

Q. In other words, in that check, although you paid seventy-five dollars and some cents—

A. Only thirty of it to be charged to the wreck.

Q. And is that a sample of what you did?

A. Yes, sir.

Q. In all cases where you wrote a check where part of it was chargeable to the wreck and part to other causes?

A. Yes, you will find a number of them like that.

(Testimony of Daniel Kern.)

Q. As you made payments then from time to time you carefully segregated anything that was not chargeable to this collision; is that right?

A. Yes, sir.

Offered in evidence and marked Damage Exhibit 24,659.

Q. Mr. Kern, I hand you vouchers with accompanying checks 24,658, 24,686, 24,687, 24,688, 24,690, 24,692, 24,693, 24,694, 24,695, 24,696, 24,697, 24,704, 24,705, 24,706, 24,707, 24,708, 24,709, 24,710, 24,711, 24,712 and 24,713 and will ask you to please examine them and state whether those are the repair checks similar to those you have previously described?

A. Here is check for \$80.00 and only \$30.00 of it charged to the wreck.

Q. The same as you described before? A. Yes.

Q. Any other instance of that careful segregation of these charges?

A. This man was paid \$80.00 and only \$30.00 charged to that account.

Mr. WOOD.—Now, I think that we can adjourn and get together on these matters and will be able to dispose of it promptly.

Whereupon proceedings herein were adjourned until to-morrow morning. [521]

Portland, Oregon, Tuesday, July 18, 1916.

10 A. M.

Testimony of Daniel Kern, for Libelant (Resumed).

DANIEL KERN resumes the stand.

Direct Examination Continued.

Questions by Mr. WOOD:

Mr. Kern, I show you a list and ask you what it is and whether it was made up in your presence?

A. It is a list of damage for raising the steamer "Kern."

Q. That is just the raising alone, isn't it?

A. Yes, sir.

Q. Without taking into account the repairs?

A. Yes, sir.

Q. Does that list contain a correct statement of the sums paid out in raising the steamer "Kern" which you can evidence by the vouchers and receipted bills? A. Yes, sir.

List offered in evidence and marked Damage Exhibit "E."

Q. I now hand you a bunch of vouchers and checks and receipted bills and will ask you whether those are the vouchers and checks and receipted bills to support this statement that I have just shown you?

A. They are.

Q. This list? A. Yes, sir.

COMMISSIONER.—Do the numbers on these vouchers agree with the numbers on the list?

Mr. WOOD.—They do.

Mr. REED.—Does that comprise all of the vouchers for just this one list?

(Testimony of Daniel Kern.)

Mr. WOOD.—I offer the vouchers and receipted bills and checks in connection with the list.

Mr. REED.—No objection will be made to this at this time, [522] the right being reserved, as I understand, to examine these and make objections.

Marked Damage Exhibit "F."

Q. Mr. Kern, I hand you a list of damages in raising the "Kern," which has been offered in evidence, and call your attention to items listed, "Use of barge 'Washtuena,' capacity 1600 tons dead weight; use of barge No. 17, capacity 1400 tons dead weight, each with two wrecking pumps and two steam boilers, also one hoisting engine, tackle, block wires and connections; also one scow barge from August 27 to October 29, 63 days at \$100.00, \$6300.00, and damage to 'Washtuena,' \$750.00, and damage to No. 17, \$300.00," and I will ask you whether there are any receipted bills or checks for those three items?

A. Not for that amount.

Mr. WOOD.—And those items, Mr. Reed, I call your attention are put on the list separate from the total checks and receipted bills, etc. These items we will support by testimony already in and further testimony.

Q. Now, I show you another list marked "Kern" Damages, Repairs, not including labor," and ask you what that list is?

A. I think that is a list for supplies that went—different items that went into the repairs of the steamer "Kern" to the amount of \$10,066.42.

(Testimony of Daniel Kern.)

List offered in evidence and marked Damage Exhibit "G."

Q. Now, I hand you a bunch of vouchers and receipted bills and checks and ask you whether these are the vouchers and checks that correspond with the list I showed you?

A. Yes, sir; those are the vouchers and checks that correspond with the list. [523]

Q. The list was made up from the vouchers and bills in your presence, was it not? A. Yes, sir.

Offered in evidence and marked Damage Exhibit "H."

Mr. REED.—Subject to the same objection in regard to examination and objection.

Mr. WOOD.—Now, I have here a bunch of checks paid to the laborers in repairing the "Kern."

Q. Mr. Kern, did you and Mr. Campbell and I prepare a list of these vouchers from the vouchers?

A. Yes, sir.

Q. And check the list over with the vouchers?

A. Yes, sir.

Q. And that list shows what?

A. That shows the list of laborers in repairing.

Offered in evidence and marked Damage Exhibit "I."

Q. Are these the vouchers in connection with the last list? A. Yes, those are the ones.

Offered in evidence and marked Damage Exhibit "J."

Mr. REED.—Subject the same way to objection.

Q. These vouchers are what was paid laborers in

(Testimony of Daniel Kern.)

repairing the "Kern"?

A. Laborers and carpenters, all labor.

Cross-examination.

Questions by Mr. REED:

Mr. Kern, when did this collision occur?

A. Eighteenth of August, 1909. [524]

Q. And how long were they raising her?

A. Well, I don't remember.

Q. What? A. I think they were about—

Q. Your books show October 29th, from the 27th of August, about two months?

A. That is probably correct.

Q. I am not questioning that. Did they have any slips or accidents while they were doing this?

A. I think so.

Q. What? A. Sure.

Q. What were they?

A. Chains slipping and had to change the gears.

First went down to raise the boat and found the lines they had—they couldn't raise the boat with them. They had to go back and get timbers and different chains and rigging and one thing and another.

Q. Who took the first down there?

A. Mr. Knudsen.

Q. And didn't he inspect it before he went down?

A. Yes, but it is pretty hard to tell about lifting a boat.

Q. How did he find the second time?

A. He found out the first gear he took wouldn't work.

Q. Couldn't the diver tell?

(Testimony of Daniel Kern.)

A. Didn't have any diver; diver could do nothing in that current and depth of that water.

Q. Too deep?

A. And boat in a hole; the conditions surrounding that collision and that wreck; that took the time.

Q. What conditions?

A. Current in the river. This boat lay crosswise in the river, [525] and the depth of the water and the weight of the boat. You see the same as lifting a steel boat, built of oak. She had several—I don't know—probably a hundred tons of stone in her for ballast, and she was full of mud; had to lift a good many hundred tons in raising that boat. That boat was all oak. It was done just as quick as possible. They worked night and day whenever the opportunity was right. Took advantage of the tides whether it be night or day.

Q. Did you change the method of working the "Kern" from the time you started?

A. What is that?

Q. Did you change the method of procedure after you started? A. No, just got stronger gear.

Q. They went down, did they, with the intention of raising her by floating her, chains underneath?

A. Yes.

Q. And carried that out to the end?

A. Yes; the only way it could be done, a boat that heavy.

Q. How long a time did the change of chains, for instance, and change of gear necessitate in the work?

A. I don't know; several days.

(Testimony of Daniel Kern.)

Q. More than once? A. Changing rigging?

Q. Yes.

A. I don't think we changed it more than once; we had to come up here and get timbers; saw heavier timbers than we had; different rigging.

Q. Mr. Knudsen could tell that, could he?

A. Yes, sir.

Q. Was there ever any photograph? You introduced a couple of [526] photographs showing a view of the "Kern" after she was raised, showing the point of contact where she was cut by the "Elder."

A. We have photographs showing her in drydock; that is all.

Q. That is the one directly astern, is it?

A. No, not directly in the stern, from the quarter.

Q. Was it taken inside the drydock so you would get a good look at it? A. Yes, sir.

Q. Was it in evidence?

Mr. CAMPBELL.—That was introduced in evidence in the original case.

Q. You have one at home, have you? A. Yes.

Q. A duplicate?

A. I don't know whether a duplicate of the one in there.

Q. Anyway suppose you bring it down if you can. I want to get a look at that to check up on the timber. Now, these totals that aggregate forty-three thousand dollars, I believe, are the raising and the repairs?

Mr. WOOD.—And the demurrage.

(Testimony of Daniel Kern.)

Mr. REED.—How much is that demurrage?

Mr. WOOD.—I couldn't tell you offhand.

Mr. CAMPBELL.—\$6,750.00.

Mr. REED.—That would be about thirty-five thousand and a little over for raising and repairs.

Q. Now, you gave a sum approximating fifteen thousand dollars for her when she was sunk before?

A. Oh, no; don't make any difference what we paid; when we bought her she was a wreck. We rebuilt her, put new machinery in her; that has nothing to do with the value of that boat at the time she was sunk. [527]

Q. She was a wreck when you got her?

A. Yes, sir.

Q. For a sum approximating \$13,500, wasn't it?

A. I don't remember what it was; something, thirteen thousand or fifteen thousand; something over thirteen thousand. I don't remember what it was.

Q. Then you rebuilt her? A. Yes, sir.

Q. Where? A. Here in Portland.

Q. What did it cost to rebuild her?

A. I don't know now just what it did cost.

Q. Can you learn what it cost?

A. Probably can learn from the books; I don't know.

Q. You don't know?

A. I suppose I can find out.

Q. Suppose you do find out and tell us what was added to that fifteen thousand dollars when you rebuilt her.

A. You are objecting to the amount of these bills

(Testimony of Daniel Kern.)

now; we gave your company an opportunity to raise this boat; they didn't do it. They wrote us a letter saying they disclaimed any liability.

Q. Who did the rebuilding of the "Manzanita" when she was rebuilt? A. We did.

Q. Here in Portland? A. Yes, sir.

Q. Where, what yard? A. In Portland.

Q. I know, but down at the Willamette Iron Works? A. No.

Q. Supple's yard?

A. No, no yard; our own dock. [528]

Q. She was hit by the port of Portland's dredge, wasn't she? A. I don't know.

Q. I mean, that was the cause of her being in the water when you bought her, wasn't it?

A. I don't know.

Q. Do you know what the damage consisted of at that time, to her?

A. No, I don't; I was sick at the time; in bed for about six months and Mr. Day done the repairing on that boat.

Q. Well, then, as far as your testimony goes, that boat cost you \$13,500?

A. No; it cost a whole lot more money than that. We put in two new boilers in her.

Q. How much did they cost?

A. They cost several thousand dollars; I couldn't tell you offhand.

Q. Then in answer to my question as to how much money you put in to replace this boat you bought for \$13,500, your answer is, I don't know.

(Testimony of Daniel Kern.)

Mr. WOOD.—[He hasn't said he bought for \$13,-500.

A. I haven't said anything about the boat costing us \$13,500, \$700.00 or any other amount. I didn't buy the boat myself. Mr. Charles Adams down at the Security Savings Bank bought that boat when sold by the Government.

Q. The claimant in this case is the Columbia Contract Company, is it? A. I believe so.

Q. What is your connection with it?

A. I am president and manager. At that time that transaction was going on I was taken sick in the month of August and I never got out until the month of February. [529]

Q. That was in what year? A. 1906 and '07.

Q. 1906 you bought her, then, did you?

A. Yes, sir.

Q. The Columbia Contract Company bought the "Manzanita"?

A. 1906, at the time I was sick.

Q. In August?

A. I don't know whether in August or what time.

Q. You have said, though, I believe—in order to be straight, all I want is to be sure of my ground so I won't be accused of misrepresenting—you paid approximately thirteen thousand?

A. Yes, when she was a wreck.

Q. And you are unable to state—

A. I don't know what it has cost up to the present time.

Q. You are not prepared to state what it cost you

(Testimony of Daniel Kern.)

to repair and fix her? A. Cost a lot of money.

Q. You are not prepared to say?

A. No, not prepared to say.

Q. Nevertheless you ask thirty thousand dollars for damage to rebuild now?

A. All we ask is the money to make us good. We haven't charged nowhere near what we should charge in connection with that boat. The boat is not what she was at the time she was wrecked (taking photographs). Here is the boat at the time she was wrecked and here she is now. Two thousand dollar cabin on there, never replaced. We are not charging anything for the difference between oak and fir wood, either, for which there should be a difference.

Q. You used that boat entirely as a towboat, didn't you?

A. Yes; that is what we use all our boats for.

Q. And what value is the cabin to you on a towboat? [530] A. What value?

Q. Yes.

A. Well, for to live in the same as on any other boat.

Q. You have plenty of cabin left on her for the men that work on her, haven't you?

A. What?

Q. Plenty of room left in her for cabin?

A. Yes; but if we want to sell her, could sell to better advantage by having a nice cabin on her that was all finished in mahogany. The cabin was no detriment as a towboat.

Q. So you charge as a loss then to your company

(Testimony of Daniel Kern.)

the destruction of a portion of the cabin?

A. We are out that cabin.

Q. On the basis that when you would go to sell her that would be a loss to you? A. Yes, sir.

Q. What? A. That would be a loss.

Q. But her efficiency was in no way diminished or her value diminished to the Columbia Contract Company by the loss of that cabin aft?

A. Yes, it was; it was a valuable cabin.

Q. How much was the value?

A. I don't think we could replace that cabin short of two thousand dollars.

Q. As a matter of fact, wasn't that boat in more efficient shape with the room in the stern for your operations?

A. No; we did towing alongside; makes no difference with that.

Q. Did you ever charter or lease her?

A. No; busy with her ourselves.

Q. Did you ever charter or lease other towboats?

A. Yes, sir. [531]

Q. The bitts are right after the house there on most of those boats? A. Bitts after the house?

Q. Yes; don't these other people that lease boats or charter them use them?

A. This boat had bitts after the house there.

Q. I know; but speaking about the loss of that cabin, isn't it a fact the boat is more valuable for this purpose when the boat has a little room in the stern?

A. A little room?

Q. Yes.

(Testimony of Daniel Kern.)

A. The boat has plenty of room there for handling the lines. We are not making any claim for the loss of the cabin.

Q. Then you are not making a claim for the loss of the cabin?

A. I say, we are entitled to more money than we put in on these claims.

Mr. WOOD.—No; it goes to show our good faith in making up these bills that we didn't insist on the last pound of flesh to which we would be entitled.

A. This boat shows two masts; this boat repaired has only one mast. We didn't charge you for that mast. This mast here was broken off. That is the same mast; we just took and trimmed off the stub. We didn't charge for that mast, any of them masts.

Q. Now, isn't it a fact that when your company took this boat, the "Daniel Kern," and put her in shape again after the collision with the "Elder," they put her in the shape that was necessary for its uses?

A. Well, it wasn't in better shape than it was before, except one or two instances where we made things a little better, but we gave you credit for it. We didn't charge you more for it, [532] like putting the electric light plant in. We put some of the wires in conduits where they were in mouldings before. We gave you credit for the conduits, didn't charge you for them.

Q. If it had been advisable to have two masts on her, would they have been put in by you?

A. Yes; we didn't need them, but if we were to sell

(Testimony of Daniel Kern.)

that boat those two masts would be valuable.

Q. Isn't it more valuable now? A. No, sir.

Q. In the way she is for the purposes than if she had been put back again? A. No, sir.

Q. What could she be used for otherwise?

A. Could be used for passenger boat if she had this cabin on; she is a good passenger boat.

Q. What was her capacity for passengers?

A. For passengers?

Q. Yes.

A. Well, I suppose daylight run we would probably get—probably a hundred or a hundred and fifty passengers.

Q. In daylight run, yes; where, for instance?

A. Lots of places on the Sound where could run that boat.

Q. Yes, merely a daylight run.

A. She could carry, probably, forty passengers and accommodate them with sleeping quarters.

Q. How far would forty passengers go towards paying expenses?

A. I don't know; never was in the passenger business.

Q. That is what I was leading up to. There is nothing more, Mr. Wood. [533]

Redirect Examination.

Q. Mr. Kern, you referred to a certain photograph here of the "Kern" after she was repaired. I hand it to you and would like to have it identified and go in evidence. Is that it?

A. Yes, that is as the boat looks after repairs.

(Testimony of Daniel Kern.)

Offered in evidence, received without objection and marked Damage Exhibit "K."

Q. Mr. Kern, these accidents like the slipping of chains, etc., when you were raising the "Kern" that you told Mr. Reed about, are not any different from the accidents that always occur in salvage operations under difficulties of that kind, were they?

A. No, sir.

Q. Were those expenses that you incurred as shown on the lists which we introduced in evidence, necessary expenditures on the boat to raise the boat and repair her? A. Yes, sir.

Q. Were they reasonable expenditures? Could the work have been done for less?

A. I don't think it could.

Questions by Mr. CAMPBELL:

Q. In your claim for \$6,750.00 on account of demurrage or detention of the "Kern," your time runs from August 18th to December 31st. Now, I will ask you if that is all the time that the "Kern" was out of commission as a result of this accident?

A. No, sir.

Q. When did she come off the drydock with respect to the time when you ceased claiming for her demurrage?

A. We didn't charge any demurrage after she was off the drydock, but she was a long ways from being finished.

Q. After she was off the drydock, what further repairs were put upon her to complete the damage?

(Testimony of Daniel Kern.)

A. They built bulwarks on her afterward and laid deck and repaired the machinery. Didn't get that boat ready to run until about the first of March. We didn't charge any time for that while that boat was being finished up.

Q. So, as I understand, your claim is based upon the period you were out of the use of that vessel during the raising and drydocking? A. Yes, sir.

COMMISSIONER.—Do you know what it cost to construct a boat like the "Kern"?

A. Oh, that boat would cost, I expect, about \$125,000. She was built of oak, was oak boat throughout; oak and teakwood.

Mr. REED.—When would that be? When do you figure that construction, now or then?

A. Then; cost you a whole lot more now.

Mr. REED.—A good deal more now. Was it any more valuable to you by being constructed of oak and teak?

A. Sure; would last a whole lot longer; the life of the boat. No limit to it, better than steel.

Mr. WOOD.—Was built of Eastern white oak, wasn't she? A. Yes, sir.

Witness excused.

Whereupon proceedings herein were adjourned until to-morrow. [535]

Portland, Oregon, Wednesday, July 19, 1916.

2 P. M.

Mr. REED.—I will object, not to the form of the account as shown but to the substance of the evidence on the ground that it is incompetent, irrelevant and

(Testimony of Daniel Kern.)

immaterial, inasmuch as the question is of damage to the "Kern" at the time of collision, and the evidence produced in the checks, vouchers and accounts are based only on the cost of raising and repairs, not in connection with the value of the boat at the time of the collision, the evidence being that she cost thirteen thousand dollars and had one boiler added. And also to the evidence in the account on the per diem for loss of time named as demurrage on the ground that sufficient showing has not been made to support the written claim of \$50.00 a day for the need or use of the boat during that time.

I have a couple of questions I would like to ask.

Mr. CAMPBELL.—Are those all your objections?

Mr. REED.—I have no objection to the specific evidence.

Mr. CAMPBELL.—Does that complete the objection?

Mr. REED.—That completes objections to the offer of written testimony made; the lists and vouchers and accounts.

I would like to have Mr. Kern recalled for further cross-examination. [536]

Testimony of Daniel Kern, for Libelant (Recalled—Cross-examination).

DANIEL KERN, recalled for further cross-examination.

Questions by Mr. REED.

The Columbia Contract Company at the end of the year has a balance sheet, I presume, or list of assets and liabilities? A. Yes, sir.

(Testimony of Daniel Kern.)

Q. Do you know what the "Kern" stood on your books in value on the 31st day of December, 1908, the year previous? A. I do not.

Q. Can you ascertain it? A. I think so.

Q. Will you bring your original record to show what she was entered in your books at that time?

A. Well, if I can find it, I will.

Mr. CAMPBELL.—May we ask upon what ground that is material? What is your theory?

Mr. REED.—The theory is this: The question of damage is damage to the "Kern," and it may be the cost of what was done by the libelant adds up such a figure, but it may not be damage to the "Kern"; there might have been a great many things happen we know nothing about that would have enlarged these figures very greatly.

Mr. CAMPBELL.—You can't prove that by proving the book value of this boat in 1908. You have to prove that by cross-examination of these witnesses, or independent testimony showing there were other damages included in this bill.

Mr. REED.—We can lead up to that; that is what I want to show. I merely want to show my good faith.

Mr. CAMPBELL.—We are not questioning your good faith; questioning the materiality of a demand upon us to bring the [537] books to show the book value of this vessel in 1908. Our rights are simply these: We had a right to have that ship repaired, the damage done by the collision repaired so as to restore the ship in as good a condition as she was before the

(Testimony of Daniel Kern.)

collision; that is what we are attempting to prove. Now, in addition to that we are entitled to compensation for the time that was lost by being deprived of the use of the vessel during the time laid up. Now, on these two questions, how can you represent to the Commissioner that the evidence of book value in 1908 is material or pertinent?

Mr. REED.—Because I presume they didn't have any book value at June 30, 1909. If they had that I would prefer to have it.

Mr. CAMPBELL.—That is an evasive answer.

Mr. WOOD.—Suppose they had a book value of ten dollars. It wouldn't have any value at all.

Mr. REED.—Would certainly enlighten the Commissioner as to what he thinks about it.

Mr. WOOD.—I don't think so. It is a well-known fact many corporations carry property at a value of ten dollars when it is really worth fifty thousand.

Mr. CAMPBELL.—How can the value of the vessel be material to this inquiry?

Mr. REED.—Because I don't believe as a matter of law that any unlimited amount can be recovered.

COMMISSIONER,—Don't you think they had a right to raise this boat and repair it, Mr. Reed?

Mr. REED.—They did, yes; had a right to raise and repair it.

COMMISSIONER.—The question here, it seems to me, is [538] whether or not those repairs were necessary. Were they made? If they were not, of course, that has to be shown.

Mr. REED.—If they were not, then a certain

(Testimony of Daniel Kern.)

amount of that would not be allowed.

COMMISSIONER.—That is true; but I take it you want to show that either by cross-examination and questions on these vouchers, this evidence, or else would have to show it by some affirmative proof. That would be my judgment. I shall not exclude the testimony if you want to put it in, because it will all come up on the question of exceptions to the report, anyway; and if you want to put the testimony in you will have that privilege, of course, because that is simply my opinion and the Court or judge may take a different view of it.

Mr. WOOD.—Well, we have received notice to produce them; you say you will admit it, so if we can find it we will produce it. We will have to go to the quarry, I suppose, for it; it may take a day or two in time.

COMMISSIONER.—That is all you want, Mr. Reed; just the figures that appear on their books?

Mr. REED.—Yes.

COMMISSIONER.—Then you can do that by stipulation, I suppose, if you can't do it any other way.

Mr. REED.—Easy enough to do it; put it in next week or as soon as he gets it. A delay of a day or two doesn't make any difference to me.

Q. Now, Mr. Kern, speaking of the repairs on the starboard side of the boat forward of the point of contact, do you know yourself how much new fir, new timber, was introduced into the side of the boat?

A. No, sir; can tell by looking at the bills. That is the [539] only way I could tell.

(Testimony of Daniel Kern.)

Q. I don't mean the thousand feet. I mean the distance, the number of feet renewed.

A. No; we had to go up quite a ways in that ceiling and outside planking; would have to go quite a ways forward in order to get the planking—in order to strengthen the boat.

Q. Mr. Kern, this boat was used exclusively by the Columbia Contract Company in towing rock barges, was it not? A. Yes, sir.

Q. And its use was the same as that of the Sampson and the other towboats? A. Yes, sir.

Q. Well, in putting the value that you put on this boat in your direct testimony, was that value placed in connection with the use of the boat or the cost of the boat? A. I didn't put any value on it.

Q. You didn't put any value on it?

A. No; I said—I just told you what the boat cost when we bought her. That didn't represent the value of the boat, that statement that I made. And another thing, you asked us to produce the books what that boat stood us in 1908. That is nothing to go by as to what the boat was worth at the time she was sunk, because in the spring of 1909 we put these new boilers in the boat.

Q. Do you remember what that cost was?

A. New boilers?

Q. Yes.

A. No, I couldn't tell you, but we had to do a lot of other work besides putting the boilers in.

Q. The boilers were put in because the old ones were worn out? [540] A. What is that?

(Testimony of Daniel Kern.)

Q. The new boilers were put in because the old ones were worn out?

A. Not particularly worn out, because we are using that boiler ever since; but we didn't get—the steam was not sufficient, and 1908 would not represent this boat at the time she was sunk. You ask us to produce what has stood on our books in 1908. That would not represent what that boat had cost us when that boat was sunk. It was in the spring of 1909 that we put those boilers in, just three or four months before she was sunk, just a few months.

Q. At the time she was purchased she had been raised by the government, hadn't she?

A. She was a wreck when we bought her.

Q. But she had not been repaired? A. No.

Q. This repair work was done by yourself?

A. Yes.

Q. Do you know what it cost?

A. No, sir; I didn't do the repairing. I was sick at the time.

Redirect Examination.

Questions by Mr. WOOD.

Mr. Kern, if you had had the "Kern" the remainder of that year and she had not been sunk, would you have continued to use her in your business? A. Yes, sir.

Q. Is there anything included in this list of damage which we have submitted here, in the way of repairs which were not necessitated by this collision?

A. No, sir; in fact, we didn't put the boat in as good a shape as she was. We substituted fir for oak

(Testimony of Daniel Kern.)

and we substituted [541] galvanized iron for copper; and that boat was all fastened with copper bolts and copper spikes when we bought her from the Government, and we didn't put any of that back in the repairs.

Q. Were all of these bills and checks and vouchers actually paid? A. Yes, sir.

Q. Were the barges "Washtucna" and barge No. 17 repaired as to the damages which were done through cutting these holes in their sides and decks, etc.? A. Yes, they were repaired.

Q. Is the cost of these repairs included in these bills? A. No, sir.

Witness excused. [542]

**Testimony of Theodore Knudsen, for Libelant
(Recalled).**

THEODORE KNUDSEN, recalled by the libelant.

Direct Examination.

Questions by Mr. WOOD.

Mr. Knudsen, in your judgment as a shipbuilder, what would it have cost in 1909 to have duplicated the "Kern"?

Mr. REED.—I now raise an objection to that. I make this objection: The matter of the cost of the duplication of the "Kern" is incompetent and immaterial to show what the condition of the "Kern" was at the time of the collision, and is not available to show the worth or value of the "Kern" at the time of the collision.

Mr. WOOD.—I am perfectly willing to withdraw

(Testimony of Theodore Knudsen.)

the question providing Mr. Reed is willing to have stricken out all his—testimony about the cost of the “Kern,” this thirteen thousand dollars that he talked about as the cost of the wrecked hull. Now, if he wants to go into that phase of the subject I am perfectly willing to meet him on it and show what it costs to build a boat like the “Kern.”

COMMISSIONER.—The testimony will go in under the objection.

A. Well, to build a boat of that class, of that material and machinery and equipment, I think about \$150,000 at that time.

Q. What can you say from your judgment as a wrecker, as to whether this sum of seventeen thousand nine hundred odd dollars that we claim here as expended in the raising of the “Kern” was the reasonable sum for that work?

A. Very reasonable, yes; in my estimation it was reasonable. I performed the work myself and I know it was reasonable. [543]

Q. Now, again, in your judgment as a ship repairer, what do you say as to whether this sum of nineteen thousand odd dollars that we claim for the repairs of the “Kern” was a reasonable amount to do that work?

A. It was; it was done as economically as it possibly could be done.

Q. Was she restored to as good condition as she was before the accident? A. Not as complete; no.

Q. I think you have already testified about her cabin not being placed back; what about her main

(Testimony of Theodore Knudsen.)

mast? Was that put back?

A. Well, the main mast; no, it was not.

Q. Did you testify about fir being used in large part instead of oak? Did you testify to that?

A. I don't know whether I did or not.

Q. Was that the fact? A. Yes, it was.

Q. Can you tell in a general way what the outfit was on the barges, the wrecking outfit, how they were fitted up?

A. Why, were fitted out with chains and cables, long timbers and short timbers; we had, I think, it was four pumps.

Q. What kind of pumps?

A. We had one centrifugal—two centrifugals and two—I think Westinghouse, if I ain't mistaken, pumps.

Q. Were they for pumping water out of the barges when you wanted to lift?

A. Yes, sir. And we had two boilers and two donkeys, two hoists.

Q. Donkey-engines?

A. Yes; we had nine or ten anchors. I ain't quite positive; I think it was nine or ten anchors with chains and cables, equipment; also various small matters that I couldn't place, such as screws, etc. [544]

Q. You had charge of the repairs of the "Kern"; about when were they completed; about what time of the year?

A. Well, I left the Columbia Contract Company on the first day—the last day of the year 1909, but they

(Testimony of Theodore Knudsen.)

were not anywhere near complete then.

Q. At the end of 1909?

A. Yes; the last day of the year.

Q. Up to that time how had the work progressed?

A. As rapidly as possible.

Q. Do you happen to know after you left their employ when it was completed?

A. Well, I was around there occasionally and I think she was done, is my best recollection, some time in March.

Q. Of 1910? A. 1910, the following spring, yes.

Q. When she came off the drydock finally the last time, was she completed then?

A. That was in the spring?

Q. No; I thought she came off the drydock in the late fall? A. Was on drydock four times.

Q. What I mean was, when she came off the drydock in the late fall, was she completed then?

A. No, sir.

Q. What work was done on her after that?

A. Well, the engine work was all done after that, the piping, etc., laying the deck and building the bulwarks, putting wearing strakes around.

Q. You have already described the damage that was done to these two barges in this raising operation. If you can, I wish you would estimate that damage in dollars. [545]

A. Well, of course I would say seven or eight hundred dollars apiece, by judgment, at the least calculation. If you figure the strain them barges had it would be more than that.

(Testimony of Theodore Knudsen.)

Q. I notice on the claim here we claim \$750.00 damage to the "Washtuena" and \$300.00 to the barge 17. What do you say as to whether or not that is a reasonable amount?

A. That is not enough; very reasonable; was not enough.

Cross-examination.

Questions by Mr. REED:

Mr. Knudsen, what do you say about \$150,000 and the "Kern" at the time? That she was worth that or it cost that much to make her?

A. To build new; yes, sir.

Q. She was used as a towboat; and what is a towboat like that worth?

A. I am not speaking about a towboat; I am speaking about a particular boat, the "Daniel Kern."

Q. Did you ever see the "Sampson"?

A. I have, sir.

Q. She does all the work that the "Kern" did, doesn't she? A. I presume she could.

Q. She does more because she is a bar boat?

A. Yes, they are both sea-going boats.

Q. I know both, but the "Sampson" particularly is a bar tug, isn't she?

Mr. CAMPBELL.—What do you mean by bar tug?

Mr. REED.—One that can be used for towing on the bar.

A. Yes, I guess both could be used for towing on the bar.

Q. Could you have used the "Kern" at the time of this accident for bar work?

(Testimony of Theodore Knudsen.)

Q. I guess you could. [546]

Q. Could you have?

A. If you had to use, wouldn't be as handy as others, but could be used.

Q. Could, but nobody would use her?

A. Wasn't any occasion to use her.

Q. The other boats were leased out for bar work, weren't they—the "Sampson" and others?

A. I don't know a thing about it.

Q. Do you know what the value of the "Sampson" was at that time? A. Not in particular.

Q. Couldn't tell? A. Oh, I could by looking.

Q. How could you tell how much this boat would be worth and not how much the "Sampson" would be worth?

A. Could tell how much the "Sampson" would be worth by figuring up.

Q. Did you ever figure up what this boat was worth? A. Approximately so, yes.

Q. When did you figure? A. A long time ago.

Q. When?

A. When was working on her, in estimating her condition, giving an opinion.

Q. How much it would cost to make her, figure the cost price, did you?

A. Estimated the condition, yes, sir. Always do when working on boats, figure what the boat is worth.

Q. You say the item of nineteen thousand dollars for repairs was properly applicable; did you do the repairs? A. Yes, sir. [547]

Q. I thought you quit before it was done?

(Testimony of Theodore Knudsen.)

A. I was up to the first of the year, sir.

Q. What proportion of that had been done at that time?

A. Oh, probably about eighty per cent of it.

Q. Eighty per cent of it?

A. Yes, sir; seventy-five or eighty, some place in there.

Q. What proportion was finished at the time of your severing your connection with it?

A. About seventy-five per cent.

Q. I mean, what particular work had been finished?

A. Wasn't any particular work finished at all.

Q. Wasn't anything finished? A. No, sir.

Q. If nothing was finished, how can you state about the character of repairs and all that sort of thing? A. I formed an opinion of those things.

Q. What?

A. What I seen; I was there.

Q. Yes, but if nothing was finished and you quit before it was finished, you didn't see it, did you?

A. Certainly did see it.

Q. Was it finished then?

A. I was there after it was finished; I was down there once in a while, yes.

Q. Once in a while, but you had no connection with it? A. No, sir.

Q. So when you testified to this total amount it was from what some one told you? A. No, sir.

Q. What was it from?

(Testimony of Theodore Knudsen.)

A. Because I had an idea what that work cost when I quit there. [548]

Q. Just an idea?

A. Yes, sir, a pretty close idea too.

Q. With regard to the barges, the tug "Wash-tuena," in what did the damage consist?

A. Why, consist of cutting into her deck and cutting into gunwales, breaking her rails, cutting these stanchions, cutting into her frames, ceiling and planking; cutting into her ceiling, fitting cables around her keelson.

Q. Well, now, how many valves or holes did you cut in the sides? A. I told you I cut one.

Q. And how large was it?

A. About one foot square, approximately a foot; might be a little larger.

Q. And I suppose you threw her over to get that below the water-line? A. Yes, sir.

Q. And then you slid a sliding cover over that to keep the water out when you pumped her out?

A. Yes, sir.

Q. And you put two holes through the keelson, did you? And then you made the ropes or chains that went through the deck down to the keelson, fast in the keelson, did you? A. I did.

Q. How many other places was the keelson cut?

A. That is the only place the keelson was cut, two places.

Q. What planking was destroyed on her?

A. Why, the gunwale plank; the sheer plank was destroyed in certain places.

(Testimony of Theodore Knudsen.)

Q. How far? A. I don't know. [549]

Q. Ten feet?

A. Yes; you can't get planking ten feet; has to be twelve or sixteen feet.

Q. One hundred feet? A. Forty feet.

Q. The ceiling is what you refer to as deck?

A. No, ceiling is not deck.

Q. When you say ceiling is that the side of the boat? A. The side of the boat inside.

Q. That is where you cut through one hole?

A. Yes, but cut inside and out, both.

Q. You say frames? A. Yes, sir.

Q. What frames?

A. Why, planks, planking. This planking which forms what is the ceiling; in other words, ribs.

Q. What did you do to that?

A. Cut a hole through that to get my opening through.

Q. Did you cut a one-foot hole through them?

A. Not one foot; I cut part of it out.

Q. Did it weaken it any? A. It certainly did.

Q. I don't understand that; you cut a one-foot hole? A. Yes, sir.

Q. And you went through the frame to make that hole?

A. The frames isn't twelve inches apart, you know.

Q. They are not? A. No.

Q. You had to take out one of them?

A. Yes; had to take a part of it.

Q. What stanchions were destroyed?

(Testimony of Theodore Knudsen.)

A. The only stanchions is what goes from the covering board up; [550] they were cut by cables and broken off.

Q. And rail is what you described before, is it, or is that additional?

A. No, the rail is the part that goes on top of the stanchions; the wires cut right through the rails, stringers and all.

Q. That is where these big logs went across?

A. Yes, sir.

Q. These gunwales, too?

A. No, the gunwale is below; the gunwale is the covering board and the shear strake is the gunwale.

Q. That is all covered by that same length of, say, forty feet where these big piling, boards, whatever you call them, went across there? A. Yes, sir.

Q. Then you cut the decks? A. Yes, sir.

Q. How big a place in the deck?

A. So a man could get his hand around there and pick up the pieces; pick up the cables; pass the cables around?

Q. Pass the cables up through? A. Yes, sir.

Q. That charge in here is \$750.00? A. Yes, sir.

Q. And your estimate is that cutting that hole in there a foot square and laying the piling across destroyed, say, forty feet of the rail and gunwale and whatever it may be there, and the hole in the keelson and the holes in the deck amounted to \$750.00?

A. Yes.

Q. What is the cost of the scow?

A. Cost of her?

(Testimony of Theodore Knudsen.)

Mr. WOOD.—It isn't a scow; she is a barge; a whole lot of difference. [551]

Q. Barge.

A. You mean to-day or at that time?

Q. That time?

A. Oh, about sixty thousand dollars.

Q. Sixty thousand dollars? A. Yes, sir.

Q. She was a hull? A. Sir?

Q. She was a hull with a little house aft?

A. Was a regular ship without spars. Full equipped ship without spars and rigging. She had anchors and chain, windlass and cabin, regular ship; model built ship. I guess you are under the wrong impression as to what kind of a barge she was.

Q. I went by those photographs; now then, was the "Washtucna" similar to 17 shown in Exhibit "B"?

A. She was a model vessel as well as No. 17 was; yes, sir. Only that is to say 17 used to be a steam schooner and 17 was a tow barge or tow vessel.

Mr. WOOD.—You said 17 both times.

A. 17 used to be a steam schooner and the "Washtucna" used to be a tow barge or sailing schooner. You can see right there is the bulwarks and rails; of course you can't see the after part of it, but they are both model boats.

Q. Is this \$750.00 item based on the time in doing this or the damage to the boat?

A. Labor and material.

Q. Labor and material? A. Yes, sir.

Q. The \$750.00 was labor and material?

A. Yes, sir; it is very cheap at that. It cost more

(Testimony of Theodore Knudsen.)
than that, as a matter of fact.

Q. Well, in this list this item is bulked.

Mr. WOOD.—No, it is not; damage to the "Wash-tucna" \$750.00; damage to No. 17, \$300.00. [552]

Q. What makes the difference between \$300.00 charged to the account of 17 and \$750.00 on the "Washtucna"?

A. Because there wasn't as much damage done to No. 17; was no rails busted, no stanchions and the frames were further apart. We didn't have to cut through her frames, and she had limber planks in her hold in the place of having solid ceiling, so we could just lift them up. We didn't have to cut through her ceiling and replace it again.

COMMISSIONER.—She was a cheaper craft than the other one?

A. She was lighter constructed, yes, sir.

Witness excused. [553]

Testimony of Fred Ballin, for Claimant.

FRED BALLIN, a witness called on behalf of claimant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. REED:

Please state your name, residence and occupation.

A. Fred A. Ballin; Portland, Oregon; naval architect.

Q. And residence. You live in Portland, I believe? A. I do.

Q. You say your occupation is that of naval architect. And how long have you been in Portland at

(Testimony of Fred Ballin.)

that occupation? A. Nineteen years.

Q. Have you followed that occupation here during the nineteen years? A. Yes, sir.

Q. Did you know the "Kern" at the time of this collision in the summer or August of 1909?

A. Yes, sir.

Q. Can you state what her value was at that time?

Mr. CAMPBELL.—Objected to as immaterial to the issues in this case.

COMMISSIONER.—I don't think it is material, but this order does not specify about allowing the Commissioner to exclude testimony; so I will just let down the bars and let it in under objection.

Mr. CAMPBELL.—So the record will show our objections.

COMMISSIONER.—You can answer the question, Mr. Ballin.

A. Well, in order to answer a question of that kind it depends altogether on whether you place the value of the vessel at [554] its original cost or its earning power, what it is used for, because I know and everybody knows the "Kern" was originally built for the Government as a lighthouse tender, and was a lot of money spent on that boat for purposes which are of no use to the men who were then using it or to the company which was then using it as a towboat. I have known the boat while she was still in the possession of the Government and she had outlived her usefulness there. I know I done some work for Mr. Kern on the boat when he took her over, making her suitable for a towboat, and she was used as such

(Testimony of Fred Ballin.)

afterwards. Now, as a towboat you can compare her in value only with boats of the same nature which do the same kind of work.

Q. And as such, what would you figure her value to be?

A. And in comparing her with boats of the same class and kind, and taking in account her age at that time and the kind of machinery she had, I should judge the boat would be worth probably between twenty-five and thirty thousand dollars.

Mr. WOOD.—At the time she was sunk?

A. At the time when she was in good condition.

Cross-examination.

Questions by Mr. WOOD:

Mr. Ballin, when you say she had outlived her usefulness— A. As a lighthouse tender.

Q. You mean to the Government?

A. As a lighthouse tender.

Q. Yes; and in saying that you think she was worth twenty-five or thirty thousand dollars and no more, you again speak of her as purely a towboat?

A. As a towboat. [555]

Q. You take no account of the materials with which she was constructed; that is, that they were white oak and she was a very well built boat. In other words, you consider that when she is relegated to the class of towboats and engaged in that business, she is to be valued as a towboat only?

A. If I should value that boat for the purpose that Mr. Kern was using it at the time in comparison with a boat like the "Sampson," which I built

(Testimony of Fred Ballin.)

for him, I would say that boat would be worth probably that much money.

Q. In placing that value on her, have you taken into account that she had new boilers recently installed just before the collision, and that her machinery had been overhauled and put in good shape?

A. Yes, sir.

Q. You figured that? A. Yes, sir.

COMMISSIONER.—You don't mean to say that you *could* a boat like that for that much?

A. I didn't say that.

Mr. CAMPBELL.—As I understand your testimony, you are endeavoring to tell the Court in your opinion that boat for Mr. Kern's purposes was worth twenty-five thousand dollars to him?

A. I said between twenty-five and thirty thousand dollars in comparison—considering her—understand me right; I say this: Considering her age and the time she was still being used for a boat, other points in consideration would have limited power as she has, and the amount of work you can get out of her—because you couldn't use her to advantage where you could use other boats, and in comparison with price, the cost of other [556] boats, similar boats down there, I would say at that time, 1909, that boat was not worth more than twenty-five or thirty thousand dollars.

Questions by Mr. CAMPBELL:

What did you build the "Sampson" out of?

A. Built out of fir.

Q. Frames fir? A. All fir; yes, sir.

(Testimony of Fred Ballin.)

Q. What were the frames of the "Kern"?

A. The "Kern" is built of oak.

Q. What is the comparison between the price of fir and of oak, Eastern white oak, in 1909 in the Port of Portland?

A. You couldn't make any comparison; that is, you couldn't consider that comparison because at that time the "Manzanita" or the "Kern" was a boat that had lived probably twenty years.

Q. That isn't my question, Mr. Ballin; I am asking you to give me a comparison in price of oak and fir in this state at that time.

A. At that time it would be—the oak would cost you at that time nearly two and a half times as much as fir.

Q. Did you build the boilers into the "Kern"?

A. No.

Q. The new boilers for the "Kern"?

A. I did not.

Q. Did you know anything about the work that was done on her by Mr. Kern after her purchase from the Government? A. Yes, I do.

Q. Well, did you inspect that work?

A. I did not.

Q. Did you have anything to do with making those repairs? A. I fixed up his engines. [557]

Q. I am speaking about the work on the vessel itself. A. On the vessel I had nothing to do.

Q. You say you fixed up her engines; you mean that you did that yourself personally or that the Willamette Iron Works did it?

(Testimony of Fred Ballin.)

A. When I say I fixed up, I superintended it and made plans for it and let the contract. The Vulcan Iron Works, I think, did the work.

Q. In fact, all that you did to that engine was to put in a steam reversing gear, wasn't it?

A. Reversing gear.

Q. That is all Mr. Kern asked you to do?

A. That is all.

Q. And it was for that purpose alone he employed your expert services as a designer of engines?

A. He did; that is all. I just simply made those engines. He started to improve that so he could use it as a towboat because that wouldn't reverse.

Q. I am not asking you what your opinion is as to what he thought. A. What he told me.

Q. I asked you what you did.

A. What he told me.

Q. All you did for him, as I understand, was to design a steam reversing gear to put on that engine?

A. Yes, sir.

Q. You never made any inspection of the hull of that vessel, did you?

A. Never in a professional way; no.

Q. That is what I mean. [558]

Questions by Mr. WOOD:

Mr. Ballin, just one question. At that time Mr. Kern was using the "Daniel Kern" for the same purposes he was using the "Sampson," wasn't he?

A. He was and he was not. He was using the "Sampson" for outside and inside work and he was using the "Kern" for inside work only.

(Testimony of Fred Ballin.)

Q. Mr. Ballin, how does Eastern white oak compare with fir in the hulls of these vessels as to the life of the two timbers?

A. They will both rot in fresh water if you don't take care of them.

Q. Doesn't oak last much longer than fir?

A. Not very much.

Q. Isn't it a fact that repairs have to be made to a fir hull much oftener than a white oak hull.

A. Not if they are properly built. We built the "Sampson" seventeen years ago and I think she is in good condition to-day. We built her of fir.

Q. Hasn't she been kept up by more frequent repairs than the "Kern" has?

A. No, she has not. Mr. Kern had another boat, the steamer "Rochelle" was rotten all the way through, was made of white oak.

Q. How old was she?

A. About the same age as the "Manzanita."

Q. "Manzanita" is not rotten all through and never was?

A. I don't say she was. I am saying the fact that she was made of oak doesn't have all to do with it.

Q. No, but if made of oak and properly built has a lot to do with it?

A. The same as fir. [559]

Q. You think the difference between the "Rochelle" and the "Manzanita" was due to the fact that the "Rochelle" was not properly built and the "Manzanita" was?

A. No; the "Rochelle" was not properly salted

(Testimony of Fred Ballin.)
and not properly taken care of.

Q. The "Kern" was?

A. The "Kern" was; the "Kern" was in Government employ and she was well looked after.

Q. The "Rochelle" came from the Great Lakes, didn't she? A. Yes, sir.

Q. And was not copper-sheathed?

A. That didn't preserve her any.

Q. She wasn't, was she?

A. She was not, but that didn't preserve her. The "Kern" was copper sheathed. She was not copper-sheathed above the water-line, but the rotting in these boats takes place above the water-line, where they are not sheathed. They generally give out on the decks.

Redirect Examination.

Q. Do you know the difference in power between the "Sampson" and the "Kern"?

A. The "Sampson" has about twice the power of the "Kern."

Q. Twice the power; and the only change made by the Columbia Contract Company after the "Manzanita" was raised and purchased by the Columbia Contract Company was to put in reversing gear?

A. No; no.

Q. I mean in the engines; was that it?

A. No; I beg your pardon. I don't know what changes they made.

Q. You don't know what else they did?

A. I don't know what they made on the hull.

(Testimony of Fred Ballin.)

Q. I don't mean the hull; I mean the engines.

A. The machinery they overhauled; the machinery generally, as far as I know, and the changes necessary in order to make a towboat was to make a steam reversing gear to keep her from stopping on center.

Mr. CAMPBELL.—Mr. Ballin, are you the man who built the "Goldsborough" for the Government?

A. Yes, sir, I did.

Mr. CAMPBELL.—I thought so.

Witness excused. [561]

Testimony of R. C. Hart, for Claimant.

R. C. HART, a witness called on behalf of the claimant, being first duly sworn, testified as follows:

Redirect Examination.

Questions by Mr. REED:

Please state your name, residence and occupation.

A. Richard C. Hart; Portland, Oregon; with the Lighthouse Service.

Q. As I understand it, you are connected with the United States Lighthouse Service, and did you as such have to do with the sale of the "Manzanita" some years ago? A. I did.

Q. Do you remember what year it was in?

A. 1906.

Q. Will you please state whether or not the "Manzanita" was sold on the public market?

A. She was.

Q. Under whose supervision?

A. Lighthouse inspector.

Q. Well, who had charge of it? Who was the in-

(Testimony of R. C. Hart.)

dividual? Was it your department?

A. It was our department; yes, sir.

Q. Were bids offered?

A. We called for bids.

Q. And do you know what the price was?

A. \$13,341.00.

Q. Was it before or after she was raised?

A. After.

Q. And where was she; on the beach somewhere?

[562]

A. No; she was down at Tongue Point lighthouse depot.

Q. The Government made no repairs? They just raised and sold her?

A. Just put on a patch on the outside so she could be towed around.

Q. It was then after a collision with the port of Portland dredge, was it? A. Yes.

Q. Was she badly damaged?

A. She had a hole punched in her starboard bow.

Q. Starboard bow? A. Yes, sir.

Q. Do you know where it was? How, in connection with the foremast?

A. I should think it was about fifteen or twenty feet forward of the foremast.

Cross-examination.

Questions by Mr. CAMPBELL:

How long was she sunk before she was raised?

A. She was sunk, as I remember, in October and was raised somewhere about the end of November.

Q. Two months?

(Testimony of R. C. Hart.)

A. Some six weeks or two months.

Q. And whereabouts was this collision?

A. Near Westport, in the Columbia River.

COMMISSIONER.—Down about St. Helens, wasn't it?

A. No; way below that. Down at the head of Puget Island.

Witness excused. [563]

Testimony of Captain J. E. Copeland, for Libellant.

Captain J. E. COPELAND, a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Captain Copeland, were you on the "Kern" at the time she was sunk? A. Yes, sir.

Q. In what capacity? A. Master.

Q. When was she sunk?

A. She was sunk at one o'clock on the morning of the 19th of August, 1909. As nearly one o'clock as I can tell. My watch stopped at a quarter to one. Went down with the boat. I suppose was about when she sunk.

Q. When were the raising operations started with the barges?

A. As nearly as I can tell, 28th of August, 1909.

Q. You say as nearly as you can tell?

A. As nearly as I can tell by the time-book. We did a lot of skirmishing around, of course, before we hired a lot of men, and the men's time began on the

(Testimony of Captain J. E. Copeland.)

28th of August. I have the time-book here.

Q. No; if you are satisfied.

A. Yes; the 28th of August is when we began to keep the time for the raising of the vessel.

Q. About how long were the barges used in that operation?

A. Well, they were used continuously in that operation from the time we began, the 28th of August, until the boat was in the drydock and for five or six days after she went into the drydock, in October. I think it must have been a good week, [564] anyhow, after she went in drydock that we were using the barges there.

Q. To what date would that carry the use of the barges?

A. That would carry up to about the 25th—about the 25th or 26th of October; I don't remember the exact date that we got to the drydock, but I think it was about the 19th or 20th, the 20th possibly. I think the 19th we got to the drydock—no, the 20th we got to the drydock; the 19th the men's time stopped; that's right. The 19th the time of the men stopped; the 20th we arrived at the drydock.

Q. You didn't go on drydock as soon as you got there?

A. No; we had to wait; a vessel in drydock and we couldn't get in.

Q. About how many days did you have to wait?

A. I think about three days.

Q. So that would be about the 23d you went in drydock? A. Yes, sir.

(Testimony of Captain J. E. Copeland.)

Q. And the barges, you say, were in use a week after that? A. Yes, about a week after that.

Q. That would carry it up, then, until the end of October? A. Yes, about the end of October.

Q. Why were the barges necessary to use there after the vessel went on drydock?

A. There was a lot of refuse there we had to put on the barges and take away, they didn't want around the drydock.

Q. Such as what?

A. Such as rock and mud and stuff that came out of the vessel.

Q. How about her engines, machinery and the like of that?

A. No, we didn't take any machinery out. [565]

Q. And cables and things of that kind?

A. Was a lot of cables that was used there that we brought to town on the barges, and I don't know but what a lot of jack-screws and some chains; a lot of chains that we had in raising the vessel.

Witness excused. [566]

Testimony of William B. Honeyman, for Libellant.

WILLIAM B. HONEYMAN, a witness called on behalf of libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. WOOD:

Mr. Honeyman, what is your business?

A. Engineer, surveyor and appraiser.

Q. Will you please state your business as a marine engineer?

(Testimony of William B. Honeyman.)

A. I have been surveyor for Lloyds, that is, engineer's surveyor since 1893 almost exclusively, up to the time Henry Hewitt died. There have been very few Lloyd cases since that time; I have been on one or two along with the hull surveyor, Captain Veysey.

Q. In addition to being Lloyds' surveyor, have you had other experience with marine engines?

A. Yes, sir.

Q. And machinery? A. Yes, sir.

Q. What is it?

A. Repairing them when I was in the foundry business; in the foundry business up to 1906 for thirty-four years.

Q. Were you employed to make a survey on the "Daniel Kern" after she was wrecked with the "George W. Elder"?

A. Yes, sir; employed by both Lloyds' agent, Henry Hewitt, and Mr. Kern.

Q. Who was employed with you on the survey?

A. Captain Crowe.

Q. Is he living now?

A. No; he was drowned several years ago on that vessel down there at Tillamook. [567]

Q. Did you and Captain Crowe embody the results of your survey in a written report and recommendation? A. We did.

Q. I show you a paper and ask you if that is it?

A. That is our report; there were five or six copies of that report made and that is one of them.

Q. Captain Crowe was more particularly the sur-

(Testimony of William B. Honeyman.)

veyor of the hull and you were more particularly the surveyor of the machinery?

A. Yes; I didn't go down to where the vessel was sunk. I didn't take part in any connection with it until they got her on the drydock; then we worked together, both on the "Kern" and on the barges.

Q. On page 5 of this survey and report is a heading entitled "Engine and machinery report." I want to ask you, Mr. Honeyman, if that is a part of the report that fell within your particular jurisdiction.

A. Yes; that is the report that I made as to the damage that was found there, and the recommendation of the extent of the repairs that were to be made, and replacement of the stuff that was entirely destroyed.

Q. You made that, of course, from a personal survey of the vessel?

A. Yes; Captain Crowe was along with me and I was along with him on the hull. We went through the hull after the ballast was taken out of the boat, cleaned out. We estimated was about a hundred tons of ballast, rock ballast aboard there; probably nearly as much weight of mud, and after that was cleaned out we then made the particular survey of that hull and machinery. [568]

Q. Does this report, and more particularly the part that you wrote about the machinery, correctly state the damage to the machinery and the repairs that were necessary to put it in shape again?

A. Yes.

(Testimony of William B. Honeyman.)

Mr. WOOD.—I offer this survey and report in evidence.

Mr. REED.—Is it all offered?

Mr. WOOD.—Yes.

Mr. REED.—Including the report of Crowe?

Mr. WOOD.—Yes; they both signed it jointly.

Mr. REED.—I make this objection: That in either event it is a self-serving document and not an admission of the claimant and is not admissible evidence, being his own writing and declaration; and also it is hearsay on the part of the statement of Captain Crowe.

COMMISSIONER.—Might be the opinion of an expert; I don't know for what purpose offered, of course.

Q. Page 2, Mr. Honeyman, is a heading, "Examination on Drydock," in which many references are made to the damage to the machinery. I want to know if that part of the report relating to the machinery there was the result of your survey?

A. I was along with Captain Crowe and we jointly made the survey.

Q. You made that up together? A. Yes, sir.

Q. As a joint report?

A. Yes; we made that the first time we went aboard, the ballast not being removed; and we made our final survey in particular when that was removed so we could get to the hull.

Q. Without withdrawing this at all, letting it remain in evidence [569] I want to ask Mr. Honeyman if the parts of that report relating to the ma-

(Testimony of William B. Honeyman.)
achinery were written by himself as a correct report of the condition of the machinery at that time.

A. The part that I put in there on the machinery was written by myself.

Q. And was that a correct statement at that time, based on your own investigation of the condition of the machinery, as you found it?

A. Yes, and in addition to that a return survey was made; the survey was made—

Q. I am coming to that.

Mr. WOOD.—Then I think the report is in any event admissible as a record of his past recollection.

Mr. REED.—I object to it on the ground it is incompetent, immaterial and irrelevant, a self-serving declaration, not a part of the *res gestae* and not admissible on any ground.

Q. Could you state, Mr. Kern, independently of that report, now in detail the damage to the machinery, and the recommendations you made, or would you have to rely on that report?

A. Oh, no, I know in a general way all I did. If you will notice on that report, it is put in general terms there. Now, take the item of electric lighting and dynamo for running it; that is just general. It was a general wreck there and called for complete installation of that and rewinding the dynamo.

Q. Yes, but what I am getting at, could you now, independent of that report and without looking at it, state the condition of that wrecked machinery, and what it was necessary to do to repair it as accu-

(Testimony of William B. Honeyman.)

rately and in as full detail as this report itself does?

[570]

A. I think I could, generally.

Q. All right, go ahead and do it.

A. Well, the collision had cut the boat something—ten or twelve inches forward of the stern post, which would make it probably 25 feet from the extreme deck line, the overhang, and the "Elder" had penetrated the hull there to within ten inches of the midship line. That caused the carrying away of some timbers; struck the intermediate shaft in the crash there so that it broke the couplings on the intermediate shaft, also the stern bearing of the tail shaft, which was a bronze casting or brass, and it damaged that so, cracked it right through, so it had to be replaced; that was a casting weighing between eleven and twelve hundred pounds; that had to be replaced, and the breaking of the coupling, took a terrible force to do that, because my recollection is that was about a seven or eight inch shaft, and took an awful force to break that coupling. Now, all the asbestos covering on the boilers and all the pipes were either shifted or knocked off; it was all gone so it had to be entirely replaced; the piping was bent and crooked and filled with silt to such an extent it had to be all taken off and replaced, where bent or broken, and put back again. Then all the gauges—I think it was six gauges altogether, steam pressure gauges and water gauges, they were all entirely destroyed, had to be renewed. One of the pumps was broken so it was entirely—it was bet-

(Testimony of William B. Honeyman.)

ter to put a new pump in than to repair it; it would cost more to repair it than new would cost, and the other pumps, not thoroughly destroyed, were all filled with silt and sand, and it was necessary to take apart and clean them and put them back again. That applied to all the machinery, because in addition to the rust and silt damage [571] there had been some fuel oil, I presume, which made a terrible mess of it, and it was quite a big job to clean the material out of the interior of that hull, and the machinery, it was in such a muss it had to be practically taken apart in detail, cleaned up and the broken parts replaced with new, and the old ones reinstalled, where possible to use.

Q. What about the dynamo?

A. I spoke about the dynamo; that was entirely a ruin; the wiring was all down and all the gauges—meters and gauges entirely gone, and called for new ones there, and the dynamo was used by rewinding it; the covering of the cylinders, that is another thing that was entirely down; that is all covered with walnut covering, dark and light streak alternately; that was all swelled and broken, so it had to be entirely replaced.

Q. Were these engines—main auxiliary engines, etc., rusted at all?

A. Very much rusted.

Q. Did that rust prevail over most of the machinery and equipment of the vessel?

A. Of course where it was oily it didn't cut in the same as it did where there was no oil on the surface

(Testimony of William B. Honeyman.)

of it; was all susceptible of being cleaned up though.

Q. Independent of this report of yours, can you state the recommendations you made, or would you have to rely on it?

A. They are only made in a general way. I didn't go into all the details because it was such a general damage there that it all had to be taken care of; even the portions of it that could be used had to be taken off and cleaned and reinstated. Now all the bearings of that shaft I spoke of, [572] and also the shaft, both forward and aft, all that, they were all knocked out of line and the fastenings broken. In carrying away the shaft, they carried away the bearings they ran in. The whole shaft was thrown out of line something like ten inches I think it was, running line where they were originally. It was about ten inches on the after part of it out of line with the forward part of the shaft; that is the crank shaft; you see there is an intermediate shaft that went between the tail shaft and the crank shaft, and the intermediate shaft was carried ten inches out of line.

Q. Possibly you didn't get the question. I wanted to know whether, independent of this report, you can state the specific recommendations that you made for the repair of the machinery, or whether this report states them more accurately than you could at this time. A. They are in the report.

Q. I didn't mean can you state them definitely. I mean can you state them?

A. Yes, just as I have stated, the greatest damage—

(Testimony of William B. Honeyman.)

Q. You have told us what the damage was but you haven't yet stated what would have to be done.

A. Well, be all replaced, and those that were susceptible of use again were to be cleaned up—taken out, cleaned and reinstalled, and where there was any broken or bent pipes or connections they were to be replaced with new; new gauges furnished.

Q. I see that this report of yours contains seven specific recommendations for repairs to the machinery. Now, can you state them from your memory? What I want by that is just [573] expressly what you said should be done without refreshing your recollection from this.

A. Well—well, yes, I have already done that. To start out, the engines, the rods, the wire work was all rusty, and the cylinder covering, the lagging on the cylinder, that was all swelled and twisted to such an extent it had to be renewed, had to be replaced new, and then the shaft, the intermediate shaft was carried away from its bearings and the couplings broken.

COMMISSIONER.—You have been over that. I think he has described all this damage.

A. And the same with the stern bearing, and nothing but a general idea of it could be embodied in any report either verbal or written, because it carries all the little incidents of fittings with it. That coupling there now, all the bolts on that, either six or eight, I don't know which now, they were all broken; they had to be replaced in order to make connection between the intermediate and the crank shaft.

(Testimony of William B. Honeyman.)

Report offered in evidence and marked Damage Exhibit "K."

A. Now, in connection with that—it would not appear on my report—now on the copper sheathing where it was necessary to strip off there, it had to be stripped off a considerable portion beyond where the fracture occurred in order to make the planking coincide with the specifications, that called for the planking to be replaced and take at least four frames on every separate strake of planking, so it was necessary to take a great deal of the copper off further than the broken place, in order to get the vessel [574] caulked where she was leaking, and in order to get the timbers back and anchor them in the hull; it would not do to butt them and have the vessel leak there. Every strake of planking had to take at least four sets of timbers in the frame beyond its adjoining timber:

Q. Mr. Honeyman, was the vessel resheathed with copper, where the copper was taken off?

A. Well, we made an estimate of what the resheathing would be but whether the sheathing was on there when we made our return survey—the vessel was in the water, and I don't know whether the sheathing was on there or not. I couldn't say.

Q. As I understand certain sheathing was taken off? A. Yes, sir.

Q. Was that part of the vessel recovered again?

A. Not that I know of. It was not covered up to the time we made survey in the drydock.

Q. Did you and Captain Crowe make any estimate

(Testimony of William B. Honeyman.)

as to the amount of damage the "Kern" suffered by not being resheathed, after giving credit for the price you got for selling the copper?

A. I don't think was anything made—an estimate of damage by not doing it, but we made an estimate as to the cost of putting on new sheathing, and following the Lloyd rule for depreciation for the time it was in use there; my recollection is that it was only ten thousand pounds of the copper sheathing which was involved in the stripping off there.

Q. Have you a memorandum of it there?

A. Yes, I think I have. There was 9,294 pounds, No. 24 gauge, the kind of copper that was on there; now that would weigh 9,294 pounds; now, by depreciating that the percentage according [575] to Lloyds' rule it would reduce that to the equivalent of 7,740 pounds new metal.

Q. What was done with the copper sheathing?

A. The copper sheathing was sold and brought nine cents a pound; new sheathing would cost 24¢ a pound. There was a credit made for the old sheathing of \$863 as against a charge of \$1,857 for old—depreciation of new copper; understand \$1,857 would take 7,740 pounds as against 9,294 pounds as it was new.

Q. I would like to get an idea of the result, the net result.

A. The net result would make—or the cost of the resheathing would cost \$1,857.60 and a credit of \$863.62, leaving net loss \$993.98. That was the estimate we made up and that was from actual figures

(Testimony of William B. Honeyman.)

we got; we sold the copper for nine cents a pound.

Q. So as I understand it, if the vessel had been resheathed it would have cost \$993.00 in excess of what the old sheathing was sold for? A. Yes, sir.

Q. Mr. Honeyman, have you had any experience in hiring barges such as were used in this wrecking operation?

A. Well, I have hired small ones. I never hired as large as the "Washtucna" there; that is quite a ship.

Q. Do you know the "Washtucna"?

A. Yes, made a survey of that along with Captain Crowe as to the damage done that.

Q. Also 17?

A. Yes, sir; 17 was one of those river barges. The other was built east, I believe; a ship.

Q. What did you estimate the damage to those two barges at? [576]

A. \$750 on the "Washtucna," and \$300 on No. 17.

Q. What would be the reasonable value, if you had to go out and hire them by the day, of the "Washtucna" and No. 17 if they had this wrecking equipment on them, each of them two wrecking pumps and two steam boilers and donkey hoisting engines and tackles, block wires and connections and a scow barge?

Mr. REED.—I object because the witness has said he has never had to do with a barge of that size.

COMMISSIONER.—I don't suppose there could be two barges exactly the same size.

Q. You have hired barges here on the river?

(Testimony of William B. Honeyman.)

A. Yes, frequently; I never hired one for less than ten dollars and without any equipment whatever. I put the equipment of No. 17, at least the hire of No. 17, with that equipment of—

Q. I just want a lump sum, with all the outfit of the "Washtucna" and 17—with all that outfit.

A. I would say they were easily worth forty-five or fifty dollars a day with the equipment they had on them, pumps.

Q. The whole outfit?

A. Well, yes; without any tender; without any tender or without any crew. That is just for the hire of the barges themselves.

Q. Do you mean that much for each of them?

A. I mean about thirty dollars for the large one and twenty dollars for the small one.

Q. And how much for the equipment?

A. Well, the equipment, the pumps there, I suppose that they would be at least \$10 a day, the price for the centrifugals, and then of course that would not be any crew nor any fuel, you know. Merely the material of the barges and their equipment. [577]

Q. Mr. Honeyman, didn't you tell me in discussing this yesterday, I think it was, that \$125 a day would be cheap for this whole outfit?

A. Well, that is taking the tender with it too, and the equipment that they had there for their anchors and chains and everything of that kind they had for raising it.

Q. I didn't understand how you made the difference.

(Testimony of William B. Honeyman.)

A. Well, we were merely talking of barges there, them two barges. In addition to that they had another barge; they had a steamer, and they had all the equipment for that raising. I think it would be a very reasonable charge, \$125.00 a day, for all that.

Cross-examination.

Questions by Mr. REED:

Mr. Honeyman, in this report I see you say that the "Kern" was built in 1879; that is correct, I suppose?

A. That is correct from the record because Captain Crowe looked that up. Now, I didn't put that down; that is Captain Crowe's, but I am satisfied that is correct, because that is a matter of record, you know; you can easily get that.

Q. Well, it is in your evidence any way?

A. Yes, sir.

Q. Do you know what power she had?

A. I couldn't say.

Q. What?

A. I couldn't say what the power was further than the register shows.

Q. You inspected the engines and the size of them and that [578] sort of thing? A. Yes.

Q. Did you form any opinion as to the power?

A. No; it was not necessary. I just wanted to get the cost of repairs, to make them the same as they were. There wasn't anything of the engine proper outside of the connections and rods, piping and cylinder covering that was broken; no cylinder broken.

(Testimony of William B. Honeyman.)

Q. About the only thing broken would be the tail shaft, you say?

A. Well, the tail shaft and couplings and bearings that there were on there; there were bolts carried away and some castings broken, and a great deal of the small connections of the engine were rusty and some of them twisted and bent and some broken.

Q. That is, aft?

A. Well, the engines are all aft, from the engines aft to the tail shaft.

Q. Now, then, in making these connections of fir to the oak, as you say, four frames forward, did you make them as far forward as the location of the damage that was done in the previous accident?

A. I know nothing about that.

Q. What?

A. There was nothing done in that portion of the vessel at all; we didn't recommend anything on that.

Q. No, I am asking you if you got that far forward?

A. We got clear forward because the ballast was right there at the forward hatch and clear up to the stem.

Q. What kind of timber was she repaired with forward on the starboard where she was hurt before?

[579]

A. I couldn't say that; I didn't examine that, see what kind of timber; was covered on the outside with copper and on the inside everything was all one color there, with mud and dirt when we made that examination.

(Testimony of William B. Honeyman.)

Q. So your examination was not sufficient to say what the condition of that side of the boat was?

A. There was nothing wrong with that side of the boat; we were only looking to see where any damage to be replaced. We were not looking at the undamaged portion of the vessel at all.

Q. You didn't assume it was undamaged; you *invested* by your eyesight?

A. We didn't see damage there, but we did see damage on the decks clear up to just aft the pilot-house.

Q. In making this investigation you didn't notice the kind of timber of framing or deck, or whatever it was on the side? A. We noticed oak inside.

Q. They repaired with oak the first time?

A. I don't know whether they did or not or whether any timbers carried away. I don't know anything about that. There is nothing in our report to indicate it.

Q. I am not talking about the report.

A. And we didn't make any examination about that, because nothing displaced there or no break that we could see. We made a very thorough examination from stem to stern.

Q. From stem to stern? A. Yes, sir.

Q. And yet you didn't notice what repairs made forward? [580]

A. Because all covered with mud; all inside, and with copper sheathing outside; nothing showing. I suppose all painted. I didn't know until I heard it here there was a break.

(Testimony of William B. Honeyman.)

Mr. CAMPBELL.—Shows how thoroughly repaired she was in the first place.

Q. What was the idea in leaving the copper off?

A. To get at the planking.

Q. How.

A. The copper had to be taken off in order to caulk the planks.

Q. Well, it was left off, I believe? A. What?

Q. Was it left off?

A. I couldn't say; I didn't see it on there. There was 11 feet—the copper extended from where—11 feet on the side, on each side.

Witness excused. [581]

**Testimony of J. E. Copeland, for Libelant
(Recalled).**

Captain J. E. COPELAND, recalled by the libelant.

Direct Examination.

Questions by WOOD:

Did you hear Mr. Ballin testify that at this time you were using the "Sampson" outside and the "Kern" inside? A. Yes, sir.

Q. Is that a fact?

A. No, sir; we were using both boats inside.

Q. Did you hear him testify that the "Sampson" had twice as much power as the "Kern"?

A. I did.

Q. What is the fact about that?

A. The fact of the matter is, the amount of steam the "Kern" carries would not give her quite so much power as the "Sampson" but her engines were larger

(Testimony of Captain J. E. Copeland.) and with the same amount of steam she would have more power than the "Sampson."

Q. And the question of steam pressure is entirely a question of what kind of boiler you put in her, is it?

A. Yes, sir.

Q. In that towing business was the "Kern" as valuable a boat as the "Sampson"?

A. Well, I guess she was; she did the same work as the "Sampson" does, exactly the same work. Allow as much for her as allow for the "Sampson."

Q. Was there any occasion for either boat going outside? A. Not at that time.

Q. Could the "Kern" go outside if necessary?

A. Yes, sir. [582]

Cross-examination.

Questions by Mr. REED:

What was the value of the "Sampson"?

A. What was the value of that?

Mr. WOOD.—I didn't ask about that and I object to it as not cross-examination.

Mr. REED.—The question was asked if she was as valuable as the "Sampson."

A. For this work.

Mr. WOOD.—For towing work.

Q. Now, what was the value of the "Sampson"?

A. That is not the question.

Q. That is what I am asking.

A. I am not—

Mr. WOOD.—I object as not cross-examination.

COMMISSIONER.—If you are held to the rules of examination I guess you couldn't ask it.

(Testimony of Captain J. E. Copeland.)

Mr. REED.—I want to state to the Commissioner I can't imagine why it is not proper under the most strict interpretation of the law. The question was asked on direct examination what is the value of this boat and a comparison called for.

COMMISSIONER.—He was comparing the value of the boats for this purpose, not as to cost.

Mr. REED.—What I want to get at is the value of the damage; consequently what was the value of the "Sampson"?

Mr. WOOD.—I instruct the witness not to answer and will have it certified to the Court.

Mr. REED.—I know, but the Commissioner decides it, does he not? [583]

COMMISSIONER.—The Commissioner will rule that the testimony may go in under objection.

Q. Then you can state what the value of the "Sampson" was.

A. I am not a marine architect, nor a surveyor, nor a shipbuilder.

COMMISSIONER.—That settles it. He is not qualified.

Q. You don't know.

Mr. WOOD.—You can make any of these your own witnesses, but you must stick to cross-examination.

Q. The "Kern" didn't have the power of the "Sampson," though, did she?

A. Well, she did the same work the "Sampson" did. Why didn't she have the power. She did as much work as the "Sampson" done. She was doing

(Testimony of Captain J. E. Copeland.)

the "Sampson's" work, in fact, when she was sunk. She was a twenty-two and a half inch cylinder by thirty-four inch stroke. And the "Sampson" has a twenty-inch cylinder by 28 inch stroke, which would give the "Kern" the most power.

Q. The "Kern" therefore had the most power?

A. With the same amount of steam the "Sampson" carried, but the boilers, you understand, of the "Sampson" was allowed more steam than the boilers of the "Kern."

Q. Well, did the "Kern" have the power?

A. She did the same work the "Sampson" did; must have had the power.

Q. Then you say did have the same power with smaller boiler? A. No; with that smaller boiler.

Q. Why didn't she have it then?

A. She had enough power to do the "Sampson's" work; why didn't she have as much power as the "Sampson." She was doing the "Sampson's" work when she was sunk. [584]

Q. Therefore you are saying that she was fully as capable as the "Sampson" for the work she was doing?

A. Yes, she did as much work as the "Sampson" done. In fact, she was doing the "Sampson's" work when she sunk and the "Sampson" was laid up for repairs. She was doing the same work the "Sampson" had been doing for two or three years prior, three years.

Q. That was her use doing the same work as the "Sampson"?" A. Yes; what we were doing.

(Testimony of Captain J. E. Copeland.)

Mr. WOOD.—And she did it quicker than the “Sampson”?

A. Yes; did it for less money.

Q. She did it quicker and had as much power, didn’t she?

A. I don’t know as she had as much power, as far as power was concerned; she had power enough to do the work.

Witness excused. [585]

**Testimony of Theodore Knudsen, for Libelant
(Recalled).**

THEODORE KNUDSEN, recalled by libelant.

Direct Examination.

Questions by Mr. CAMPBELL:

Mr. Knudsen, did you hear Mr. Ballin’s testimony about the rotten condition of the “Rochelle”?

A. I did.

Q. Who repaired the “Rochelle”? A. I did.

Q. Will you state whether or not it is true her timbers were in a rotten condition, as Mr. Ballin testified?

A. They were not rotten; they were sound.

Q. What can you say as to the durability and life of fir timber for shipbuilding purposes as compared with oak?

A. Well, I have known oak vessels to be over a hundred years old and still be sound.

Q. What can you say as to the durability or life of fir timber?

(Testimony of Theodore Knudsen.)

A. Oregon fir under ordinary conditions, about fourteen years.

Cross-examination.

Questions by Mr. REED:

How about the "Sampson"—what condition is she in?

A. I don't know, sir; I think she is in fairly good shape.

Q. Didn't Mr. Ballin say she had been built seventeen years ago?

A. Well, I don't know when she was built.

Q. Well, if it is true that she is seventeen years old and in good condition, how do you account for that if she is in good condition?

A. I don't know whether true or not. [586]

Q. Do you know what the "Alki" is made of?

A. What is the "Alki"?

Q. You don't know the "Alki"? She is a wooden boat I happen to think of, an old boat.

A. I don't know.

Mr. CAMPBELL.—How long ago was she lost?

Witness excused. [587]

Testimony of Daniel Kern, for Libelant (Recalled).

DANIEL KERN, recalled by the libelant.

Direct Examination.

Questions by Mr. WOOD:

Mr. Kern, was this copper sheathing replaced on the "Kern"? A. No, sir.

Q. Why not?

A. Because we expected to use the boat in fresh

(Testimony of Daniel Kern.)

water and we didn't consider it necessary, and if we had put it on the expense of these repairs would have been probably a thousand dollars more than they are at present.

Q. That is, it was not necessary for use in fresh water? A. Yes.

Q. If, however, you were going to use her on the outside?

A. Then you would have had to have copper sheathing or something to keep the teredos out of the hull of the boat.

Cross-examination.

Questions by Mr. REED:

There is not a boat in this country that is sheathed now, is there? A. Yes, I think there is.

Q. They never build and sheath them any more?

A. They have to keep a preservative on them, copper paint or red lead or something to keep the worms out.

Q. I know, but they don't build them that way?

A. I don't know; I never seen the boats built. I don't know how many sheathed and how many ain't.

Q. Don't you know about the "Wallula"?

A. The "Wallula"? [588]

Q. Oh, but she is steel.

A. She has a steel hull, I think.

Q. Take the old ones, take the old "Fearless," take the old "Astoria."

A. I never say the "Fearless."

Q. How is it you know so much about these boats when he asks you and don't know about it when I

(Testimony of Daniel Kern.)

ask you? A. About what?

Q. About sheathing?

A. I said the sheathing protected them down there.

Q. And was worthless when you changed the boat to use in fresh water?

A. We don't need in fresh water.

Q. So she don't go outside at all?

A. We didn't expect to use her outside when we bought her.

Q. And the rest of the mahogany and fancy finishes were just as valuable to you, valuable to the boat as that sheathing, weren't they?

A. Just as valuable; they were all valuable. If you wanted to find a market to sell the boat, it would help to sell it, to have sheathing, so it would help in selling the boat.

Q. That is the reason you took it off?

A. No; we had to take it off to find out where the leaks were in the boat and caulk the hole.

Mr. WOOD.—We will make up some of these figures in the book and meantime we won't close the testimony.

Witness excused.

Whereupon proceedings herein were adjourned until Friday, July 21, 1916. [589]

Portland, Oregon, Friday, July 21, 1916.

DANIEL KERN resumes the stand for further
Direct Examination.

Questions by Mr. WOOD:

I show you this ledger, Mr. Kern, and ask you if

(Testimony of Daniel Kern.)

that is one of the ledgers of the Columbia Contract Company? A. Yes, sir.

Q. Turn to page 80 in it, if you will. Is that the account of the "Manzanita" on page 80? A. Yes.

Q. The "Manzanita" was the former name of the "Daniel Kern," wasn't it? A. Yes.

Q. And referring to the book there, what do you carry the "Kern" at—what did you carry her at on your books on January 1, 1909?

A. \$24,081.79.

Q. How was that sum made up?

A. Under the cost of the boat plus repairs put into her, betterments.

Q. Was that the value that you placed on her?

A. No, sir; that was what we actually expended on the boat. The boat was worth in my estimation double that amount.

Q. But that twenty-four thousand represented the cost price of her plus what you put into her after you bought her? A. Yes, sir.

Q. How did the cost price of her compare with her actual value when you bought her?

A. What we paid for her, you mean? [590]

Q. Yes.

A. Well, we thought she was worth double that.

Q. Was this twenty-four thousand odd dollars that you carried her at on January 1, 1909, before or after the new boilers were put into her?

A. That was before. After the new boilers were put in we had expended on that boat \$33,604.82, but that didn't represent the value of the boat.

(Testimony of Daniel Kern.)

Q. Well, wasn't part of that expenditure of yours of thirty-three thousand, wasn't part of that operation expense?

A. No, I don't think so; the operation is not carried in this account.

Q. I notice some items of payroll and cook-house which I thought indicated that they at least were part of her operation?

A. Well, that cook-house was probably a charge against the boat for men boarding there at the time we were making these repairs, their proportion.

Mr. WOOD.—Mr. Reed, I have produced the book as per your request.

A. In 1910 we reappraised all of our property and this boat was on our books in 1910 at \$40,000.

Q. That was in connection with the reappraisal of all your property?

A. Yes, sir; not only that boat but all the properties.

Q. Was that the end or the beginning of 1910?

A. That was, I think, in the beginning of 1910. I wouldn't say as to that just what month that was in.

Q. But anyway it was the time you reappraised?

A. Yes, sir. [591]

Q. No; that couldn't have been the beginning of 1910, because the beginning of 1910 is still here.

A. It isn't in that one, is it?

Q. No; I say the beginning of 1910 is there.

A. No, I think it was later in the year.

Mr. REED.—Mr. Kern, that was after she was raised and repaired the second time?

(Testimony of Daniel Kern.)

A. That is the idea.

Mr. REED.—The new appraisal was after she was taken up, after the collision with the "Elder"?

A. Yes, but she was not as good a boat then.

Mr. REED.—I mean that was after?

A. After the time, but she was not as good a boat then as she was before.

Q. You mean, after she had been repaired from the "Elder" collision she was not as good a boat as she was? A. No.

Q. Where was this boat with reference to the ship channel, Mr. Kern?

A. Right in the ship channel; right on the ranges where the ships run.

Q. Was there any way that you could tell the extent of her damage before you raised her?

A. No, sir.

Q. Did you know or have any idea of the extent of her damage before you raised her?

A. No, sir.

Mr. WOOD.—I think that is all. [592]

Cross-examination.

Questions by Mr. REED:

Couldn't that have been done by divers in 68 feet of water?

A. No; we wouldn't make much headway digging down to get chains or anything under her.

Q. I mean the extent of the damage.

A. To be determined by diver?

Q. Yes.

(Testimony of Daniel Kern.)

A. No; how would a diver get inside the boat and find whether the shaft was bent or not, couplings broken, a boat full of mud?

Redirect Examination.

Q. I don't know whether this has been covered and I want to ask you in case it has not been: Do you know about when her repairs were finally completed?

A. After the collision?

Q. Yes.

A. I think along about the first of April.

Q. 1910? A. 1910.

Witness excused.

Libelant rests.

Claimant rests.

Filed Oct. 5, 1916. G. H. Marsh, Clerk. [593]

And afterwards, to wit, on the 5th day of December, 1916, there was duly filed in said court a Motion to Confirm Report of Special Master and to Amend Libel, in words and figures as follows, to wit: [594]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines,
etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Motion to Confirm Report of Special Master and to Amend Libel, etc.

Comes now the libelant and moves that the report of the referee, Mr. A. M. Cannon, in the matter of the amount of damages, be affirmed, and for a decree in conformity with said report; and further moves for permission to amend the prayer of the libel to conform to the said Referee's report, and so as to pray for damages in the sum of \$25,000.00 against the claimant and his stipulator, and for interest on said sum against the claimant alone, and for costs against the claimant and his stipulator for costs in the sum of \$250.00, and for the balance of libelant's costs against the said claimant alone.

ERSKINE WOOD,
Of Proctors for Libelant.

Due service of the within motion by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, December 5th, 1916.

SANDERSON REED,

Per B.,

Proctor for Claimant.

Filed Dec. 5, 1916. G. H. Marsh, Clerk. [595]

And afterwards, to wit, on Monday, the 11th day of December, 1916, the same being the 30th Judicial day of the regular July Term of said Court; present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [596]

In the District Court of the United States for the District of Oregon.

No. 5162.

December 11, 1916.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER" Her Engines,
etc.,

Respondent.

CHARLES P. DOE,

Claimant.

**Minutes of Court—December 11, 1916—Order
Confirming Report of Special Master, etc.**

On motion of libelant IT IS ORDERED that the report of Mr. A. M. Cannon, Referee, fixing the amount of libelant's damages in the above-entitled cause at \$41,839.83, with interest thereon at six per cent per annum from the first day of May, 1910, until paid, and awarding the libelant its costs and disbursements, be and the same is hereby confirmed and approved. And it is further ordered that libelant have leave to amend its libel to conform to the amount of said damages found by the said referee, and so as to pray for damages in the sum of \$25,-000.00 against the claimant and his stipulator, and for interest on said sum against the claimant alone, and for costs against the claimant and the stipulator of claimant for costs in the sum of \$250.00, and for the balance of libelant's costs against said claimant alone; and for such other and further relief as to the court may seem equitable and in accordance with the admiralty practice; and it is further ordered that a decree be prepared and submitted in conformity with said report of the commissioner and the prayer of the libel as amended.

CHAS. E. WOLVERTON.

Judge.

Filed Dec. 11, 1916. G. H. Marsh, Clerk. [597]

And afterwards to wit, on the 28th day of December, 1916, there was duly filed in said Court an Amended Libel, in words and figures as follows, to wit: [598]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines, etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Amended Libel.

To the Honorable CHARLES E. WOLVERTON and the Honorable ROBERT S. BEAN, Judges of the Above-entitled court:

Columbia Contract Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, presents this its amended libel against the steamship "George W. Elder," her machinery, tackle, apparel and furniture, whereof G. M. Jessen is or lately was master and C. P. Doe and J. H. Peterson are or lately were owners, and against all persons intervening for their interests in said vessel in a cause of collision, civil

and maritime, and thereupon your orator articulately propounds and alleges as follows:

I.

At all of the times in this libel set forth libelant was and is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and at all of such times was and still is the owner of a certain screw steamship known as the "Daniel Kern," which vessel was, prior to the 18th day of August, 1909, employed by libelant [599] in the towage of barges to and from Ft. Stevens, Oregon, and points upon the Columbia River above Ft. Stevens.

II.

The "George W. Elder" is a screw steam vessel flying the American flag and heretofore was plying regularly between Portland, Oregon, and Eureka, San Francisco and San Pedro, California. Her master is or lately was G. M. Jessen, and C. P. Doe and J. H. Peterson are or lately were her owners, and said vessel was at the time of the filing of the original libel in this cause, lying in the port of Portland, Oregon, and was within and subject to the jurisdiction of this Honorable Court and was seized under the process of this court issued in this cause, and later claimed by C. P. Doe as her owner and released on an admiralty stipulation for value and to abide by and pay the decree in the sum of \$25,000.00, signed by C. P. Doe, claimant and stipulator, and The United States Fidelity & Guaranty Company, stipulator.

III.

Heretofore and about one o'clock in the morning of August 18, 1909, the "Daniel Kern" was a vessel under way in the waters of the Columbia River about abreast of Waterford, Washington, and was engaged in making fast to three loaded rock barges, also belonging to libelant, preparatory to towing them from such point to Ft. Stevens, Oregon. Said vessel was in good order and condition and was well and sufficiently manned and equipped with a full and competent set of officers and crew, and said vessel had burning and was displaying the regulation lights, to wit, her port sidelight colored red, her starboard sidelight colored green, both fitted with regulation screen and burning in the proper place; her mast [600] headlight and lights also upon her foremast indicating that she had a tow, and a white light astern burning in the accustomed place. The "Daniel Kern" engines were stopped at the time and she was making fast to her tow having a head line running at the time to the barge forming the port barge of her tow. The "Daniel Kern" was headed down the Columbia River and the barges were headed substantially at right angles to her upon her port bow and towards the Oregon shore of the Columbia River. The "George W. Elder" left Portland, Oregon, upon her regular voyage from Portland to California ports, as aforesaid, the evening of August 17, 1909, and when descending the Columbia River upon such voyage and in the vicinity of Waterford light, sighted the "Daniel Kern" ahead of herself and down the Columbia River.

Neither of the sidelights of "Daniel Kern" were visible to those in charge of the navigation of the "Elder" and the "Daniel Kern" was in such position as that her sidelights could not be so visible. The "George W. Elder" blew one short blast of her steam whistle as a signal of her desire to overtake and pass the "Daniel Kern" on the right or starboard hand of the "Daniel Kern." To such blast of the "George W. Elder" the "Daniel Kern" replied with four short and rapid blasts of her own steam whistle, the danger signal, indicating that the "Daniel Kern," by reason of the fact that she did not have her tow under control, did not think it safe for the "George W. Elder," the vessel astern, to attempt to pass at that point. To the four short and rapid blasts of the steam whistle of the "Daniel Kern" the "George W. Elder" again blew one short blast, to which the "Daniel Kern" again replied with four short and rapid blasts of her own steam whistle, and almost immediately thereafter [601] the "George W. Elder" came into collision with the "Daniel Kern," striking her upon the starboard quarter aft and inflicting such damage upon the "Daniel Kern" as that within twenty minutes thereafter she sank in the waters of the Columbia River and lay upon the bottom of the Columbia River.

IV.

The libelant avers that said collision was occasioned solely through negligence and carelessness of those in charge of the navigation of the "George W. Elder" in that she did not keep out of the way

of the "Daniel Kern" and attempted to pass the "Daniel Kern" from astern without receiving the assent of the "Daniel Kern" indicated by the appropriate whistle so to do and attempted so to pass when the "Daniel Kern" had blown four short and rapid blasts of her steam whistle indicating that it was not safe for the "George W. Elder" to attempt to pass at that point; and libelant further avers that no act of the "Daniel Kern," her master, pilot, officers or crew in any respect whatever contributed to said collision.

V.

By reason of said collision so occasioned by the negligence and carelessness of those in charge of the "George W. Elder," libelant, as owner of the "Daniel Kern," has sustained damages in and about the raising and repair of said vessel and loss of equipment upon said vessel and loss of the use of said vessel in the sum of \$41,839.83, with interest thereon from the 10th day of May, 1910, until paid.

VI.

All and singular the above premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.
[602]

WHEREFORE, libelant prays for a decree fixing and assessing the libelant's damages at the sum of \$41,839.83, together with interest thereon at six per cent per annum from the first day of May, 1910, and decreeing that libelant shall have and recover from the said Charles P. Doe and the said United States Fidelity & Guaranty Company, stipulators, the sum

of \$25,000.00, and that the libelant shall further have and recover from the said Charles P. Doe, owner and claimant of the said "George W. Elder," interest upon said sum of \$25,000.00 from the first day of May, 1910, until the date of the decree; and further decreeing that libelant shall have and recover of the said Charles P. Doe and Harry Young, stipulators on claimant's stipulation for costs, the sum of \$250.00 being a portion of libelant's costs and disbursements, and that libelant shall further have and recover of said Charles P. Doe the sum of \$_____, being the balance of libelant's costs and disbursements; and further decreeing that the said decree shall bear interest from its date at the rate of six per cent per annum; and further decreeing that execution issue against the goods, chattels and lands of the said claimant and of the said stipulators to enforce said decree; and for such other, further and different relief as to the court may seem just and equitable and in accordance with the practice in admiralty.

IRA A. CAMPBELL,
ERSKINE WOOD,
Proctors for Libelant. [603]

United States of America,
State and District of Oregon,—ss.

I, Daniel Kern, being first duly sworn, on oath say that I am the president of the libelant above named, and the foregoing libel is true as I verily believe.

DANIEL KERN.

Subscribed and sworn to before me this 14th day of December, 1916.

[Notarial Seal]

M. COLPITTS,

Notary Public for Oregon.

My commission expires Jan. 21, 1917.

Due service of the within amended libel by certified copy, as prescribed by law, is hereby admitted at Portland, Oregon, December 28, 1916.

SAND. REED,

Attorney for Claimant.

Filed Dec. 28, 1916. G. H. Marsh, Clerk. [604]

And afterwards, to wit, on Thursday, the 28th day of December 1916, the same being the 45th judicial day of the regular November, 1916, term of said Court; present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [605]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines, etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Decree.

This cause having come on to be heard before the District Court of the United States for the District of Oregon on the 5th day of February, 1912, on the question of liability, and the Court having found that the "George W. Elder" was solely at fault for the collision with the "Daniel Kern" and having directed that a reference be had to Mr. A. M. Cannon to hear testimony upon and compute the amount of the libelant's damages arising out of said collision, and the said referee having filed his report in this court on the 5th day of October, 1916, finding that the amount of the said damages is forty-one thousand eight hundred thirty-nine and 83/100 (41,839.83) dollars, with interest thereon at six (6) per cent per annum from the first day of May, 1910, until paid, together with libelant's costs and disbursements;

And it appearing that an admiralty stipulation in the sum of twenty-five thousand (25,000) dollars was given in this cause for the release of the said steamship "George W. Elder" and to abide by and satisfy the decree of this court, the stipulators thereon being Charles P. Doe, the owner of said [606] steamship "George W. Elder," and the United States Fidelity & Guaranty Company;

And it further appearing that a stipulation for costs in the sum of two hundred and fifty (250) dollars was filed in this cause, the stipulators thereon being the said Charles P. Doe and Harry Young:

And it also appearing that the said Charles P. Doe appeared as owner of the said steamship "George W.

Elder" and by answer has admitted the ownership of said vessel at the time of said collision and has defended in this cause and has contested and resisted libelant's demands;

NOW, THEREFORE, the Court being fully advised in the premises, and upon motion of proctors for libelant, said referee's report is hereby approved and confirmed in every particular, and the damages of the libelant are hereby assessed at the sum of forty-one thousand eight hundred thirty-nine and 83/100 (41,839.83) dollars, with interest at six (6) per cent thereon from the first day of May, 1910, until paid;

AND IT IS ORDERED AND DECREED that the said libelant, Columbia Contract Company, shall have and recover from the said Charles P. Doe and the said The United States Fidelity & Guaranty Company, stipulators, the sum of twenty-five thousand (25,000) dollars; and that the said libelant shall further have and recover of the said Charles P. Doe, owner and claimant of said steamer "George W. Elder," interest at the rate of six per cent per annum upon the said sum of twenty-five thousand (25,000) dollars from the first day of May, 1910, until the date of this decree, to wit, nine thousand nine hundred ninety-one and 65/100 dollars; and shall further have and recover of the said Charles P. Doe and said Harry Young the sum of two [607] hundred and fifty (250) dollars, being a portion of libelant's costs and disbursements; and shall further have and recover of said Charles P. Doe the sum of three hundred

twenty-five 63/100 dollars, being the balance of libelant's costs and disbursements.

AND IT IS FURTHER ORDERED AND DECREED that this decree shall bear interest from its date at the rate of six (6) per cent per annum.

AND IT IS FURTHER ORDERED AND DECREED that execution issue against the goods, chattels and lands of the claimant and of the said stipulators to enforce this decree.

CHAS. E. WOLVERTON,
Judge.

Dated Dec. 28th, 1916.

Copy served 12/28/16.

SANDERSON REED,
Proctor for Resp.

Filed Dec. 28, 1916. G. H. Marsh, Clerk. [608]

And afterwards, to wit, on the 21st day of June, 1917, there was duly filed in said court a Notice of Appeal, in words and figures as follows, to wit: [609]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines,
etc.,

Respondent,

CHARLES P. DOE,

Claimant.

Notice of Appeal.

You and each of you will please take notice that Charles P. Doe, claimant in the above-entitled suit, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the decree in the above-entitled suit, entered on the 28th day of December, 1916, whereby it is ordered and decreed that the libelant, Columbia Contract Company, recover from Charles P. Doe and the United States Fidelity and Guaranty Company, stipulators, the sum of twenty-five thousand (\$25,000.00) dollars, and that the said libelant shall further have and recover from the said Charles P. Doe, claimant, interest upon said sum of twenty-five thousand (\$25,000.00) dollars, from the 1st day of May, 1910, until the date of said decree, to wit, nine thousand nine hundred ninety-one and 60/100; and further recover from the said Charles P. Doe and Harry Young, the sum of two hundred and fifty (\$250.00) dollars, being a portion of the libelant's costs and disbursements, and further recover from the said Charles P. Doe the [610] sum of —— (\$——) dollars, being the balance of libelant's costs and disbursements, and further that the decree bear interest at the rate of six (6%) per cent per annum, and further order exception against claimant and the said stipulators.

SANDERSON REED,

Proctor for Charles P. Doe, Claimant and Appellant.

State of Oregon,

County of Multnomah,—ss.

Due service of the foregoing notice of appeal by

copy, as prescribed by rules of Court, is hereby admitted at Portland, Oregon, this 21st day of June, 1917.

ERSKINE WOOD,
Proctor for Libelant.

State of Oregon,
County of Multnomah,—ss.

Due service of the within notice of appeal is hereby accepted in Mult. County, this 21 day of June, 1917, by receiving a copy thereof, duly certified to as such by Sanderson Reed, proctor for claimant.

ERSKINE WOOD,
Of Proctors for Libellant.

Filed June 21, 1917. G. H. Marsh, Clerk. [611]

And afterwards, to wit, on the 12th day of October, 1917, there was duly filed in said court an Assignment of Errors, in words and figures as follows, to wit: [612]

In the District Court of the United States for the District of Oregon.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines,
etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Assignments of Error.

The claimant and appellant, Chas. P. Doe, assigns as error on appeal herein:

I.

Error of the Court in finding and decreeing that the steamship "Geo. W. Elder" was liable and responsible to the libelant to whatsoever damages the "Kern" sustained.

II.

Error of the Court in finding the damages to the libelant and assessing the same in any sum in excess of twenty-five thousand (\$25,000.00) dollars.

III.

Error of the Court in making and entering a decree that the libelant, Columbia Contract Company, shall have and recover from Chas. P. Doe and the United States Fidelity and Guaranty Company, Stipulators, the sum of twenty-five thousand (\$25,000.00) dollars; and the further sum of interest at six (6%) per cent per annum upon said twenty-five thousand (\$25,000.00) dollars from the first day of May, 1910, until the date of the decree herein; and the further sum of two hundred and fifty (\$250.00) dollars as a portion of libelant's costs and disbursements; and the further sum of—costs and disbursements, or any sum whatever. [613]

IV.

Error of the Court in giving and entering a decree in any sum against the claimant in favor of the libelant herein.

SANDERSON REED.

Proctor for the Claimant, Chas. P. Doe.

Filed October 12, 1917. G. H. Marsh, Clerk.
[614]

And afterwards, to wit, on Friday, the 12th day of October, 1917, the same being the 88th judicial day of the regular July Term of said court; present, the Honorable ROBERT S. BEAN, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [615]

In the District Court of the United States for the District of Oregon.

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corporation,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Engines,
etc.,

Respondent.

CHARLES P. DOE,

Claimant.

Minutes of Court—October 12, 1917—Order Directing Transmission of Original Exhibits to Appellate Court.

This cause coming on to be heard, on motion of the claimant and appellant, Chas. P. Doe, that the original exhibits herein be forwarded to the clerk of the Circuit Court of Appeals at San Francisco with the Apostles on Appeal herein, the claimant being rep-

resented by Sanderson Reed as his proctor, and the libelant being represented by _____ as his proctor, and the Court being fully advised in the premises,—

IT IS ORDERED that the clerk be and he is hereby directed to forward to San Francisco to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, the original exhibits herein with the Apostles on Appeal herein.

Portland, Oregon, October 12, 1917.

R. S. BEAN,

Judge.

Filed October 12, 1917. G. H. Marsh, Clerk. [616]

And afterwards, to wit, on the 22d day of October, 1917, there was duly filed in said court a Prae-
cipe for Apostles on Appeal, in words and figures as follows, to wit: [617]

In the District Court of the United States, for the District of Oregon.

The Steamship "GEORGE W. ELDER," Her
Machinery, Tackle, Furniture, etc.

COLUMBIA CONTRACT COMPANY,

Libelant.

CHARLES P. DOE,

Claimant.

**Prae-
cipe for Apostles on Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare Apostles on Appeal in the above-entitled cause and include therein from the record of said cause the following papers:

Libel.

Answer of Claimant.

Findings of the Court Entered February 3, 1913.

Opinion of the Court.

Testimony Taken Before the Court.

Order Appointing A. M. Cannon Commissioner to Ascertain the Amount of Damage.

Report of Commissioner.

Testimony Taken Before the Commissioner.

Motion Filed December 5, 1916, to Confirm Report of Commissioner and to Amend Libel.

Order of December 11, 1916, to Affirm Report of Commissioner and to File Amended Libel.

Amended Libel.

Final Decree.

Notice of Appeal.

Assignment of Errors.

Order to Send Original Exhibits to the Court of Appeals.

SANDERSON REED,
Proctor for Claimant.

Filed October 22, 1917. G. H. Marsh, Clerk. [618]

Certificate of Clerk U. S. District Court to Apostles on Appeal.

United States of America,

District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 618, inclusive, constitute the Apostles on Appeal in the cause in said court of The Steamship "George

W. Elder," Her Machinery, Tackle, Apparel, and Furniture, The Columbia Contract Company, Libellant and Appellee; Charles P. Doe, Claimant and Appellant; that the said Apostles contain the caption, and a full, true and correct transcript of the record and proceedings had in said court in said cause, as the same appear of record and on file at my office and in my custody, in accordance with the rules of court and the practice of the appellant.

And I further certify that the cost of the foregoing Apostles is \$174.30, and that the same has been paid by the said appellant.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court at Portland in said District this 23d day of October, 1917.

[Seal]

G. H. MARSH,
Clerk. [619]

[Endorsed]: No. 3073. United States Circuit Court of Appeals for the Ninth Circuit. Charles P. Doe, Claimant of the Steamship "George W. Elder," Her Engines, etc., Appellant, vs. Columbia Contract Company, a Corporation, and United States Fidelity and Guaranty Company, Stipulators, Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the District of Oregon.

Filed October 29, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the District Court of the United States, for the
District of Oregon.*

No. 5162.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion,

Libelant,

vs.

Steamship "GEO. W. ELDER," Her Engines,
Apparel, etc.,

Respondent.

CHAS. P. DOE,

Claimant.

**Order Enlarging Time to and Including November 1,
1917, to File Apostles on Appeal.**

Based upon the application of Chas. P. Doe, claim-
ant and appellant herein, appearing by Sanderson
Reed, libelant appearing by M. M. Matthiessen,
Esq.,—

IT IS ORDERED that the time in which apostles
on appeal may be filed herein is hereby extended to
and including the first day of November, 1917.

CHAS. E. WOLVERTON,

Judge.

August 16th, 1917.

[Endorsed]: 5162. 13,135. Columbia Contract
Co., Libelant, vs. S. S. "Elder," etc., Respondent.
Chas. P. Doe, Claimant. Order Extending Time in
Which to File Apostles on Appeal.

No. 3073. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to November 1, 1917, to File Record Thereof and to Docket Case. Filed Oct. 27, 1917. F. D. Monckton, Clerk. Refiled Oct. 29, 1917. F. D. Monckton, Clerk.